

EDUCATION LAW CENTER  
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*Attorneys for Petitioner*

**STATE OF NEW JERSEY**

<p>Education Law Center, on behalf of the <i>Abbott v. Burke</i> Plaintiff schoolchildren,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>New Jersey Department of Education, Office of School Facilities,</p> <p style="text-align: center;">Respondent.</p>	<p><b>BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY</b></p> <p>OAL DOCKET NO. EDU Agency Ref. No.</p> <p><b>VERIFIED PETITION</b></p>
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Petitioner Education Law Center, acting on behalf of the *Abbott v. Burke* Plaintiff schoolchildren, hereby requests the Commissioner of Education to consider a controversy that has arisen between Petitioner and Respondent, New Jersey Department of Education, Office of School Facilities, whose address is 200 Riverview Plaza, Trenton, New Jersey 08625-0500, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

**PRELIMINARY STATEMENT**

1. This action concerns the failure of the DOE to promptly review and issue final determinations as to hundreds of potentially emergent projects submitted to the DOE for review by the 31 urban or SDA districts, as required by the Educational Facilities Construction and

Financing Act (“EFCFA”), the DOE regulations implementing that act, and the landmark *Abbott v. Burke* rulings. The ELC has filed this action on behalf of the *Abbott v. Burke* plaintiffs – tens of thousands of schoolchildren who, as a result of the DOE’s inaction, are attending school in buildings with unsafe, unhealthy and dangerous conditions. The emergent projects submitted by SDA districts, which include such dangerous conditions as leaky roofs, crumbling facades, inadequate heating, and inadequate fire safety and electrical systems, present an imminent threat to the health, safety and well-being of the *Abbott* Plaintiff schoolchildren and teachers and other staff in school buildings, and must be promptly addressed by the DOE. Although the regulations implementing the EFCFA require the DOE to review, issue final determinations, and forward for construction emergent projects submitted by the SDA districts on an “expedited basis,” the DOE has yet to issue final determinations on any of the hundreds of potentially emergent projects submitted by the SDA districts to the DOE in June 2011.

### **PARTIES**

2. The Petitioner Education Law Center (“ELC”), located in Newark, New Jersey, is a non-profit legal services organization that provides legal assistance to New Jersey’s low-income public school children and children with special needs in matters related to access to equal and adequate education under state and federal laws. Specifically, since 1981, ELC has served as counsel in the *Abbott v. Burke* case for the plaintiff-class of school children who attend public schools and preschools in 31 poorer urban districts. ELC represents the interests of the *Abbott* plaintiffs to ensure effective and timely implementation and State compliance with the *Abbott* remedies, as ordered by the New Jersey Supreme Court.

3. The Respondent Office of School Facilities (“OSF”) of the Department of Education (“DOE”) is responsible for reviewing and approving school district applications for

school facilities projects, including emergent projects, under the Education Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 *et seq.*, and DOE implementing regulations. The offices of the OSF are located at 200 Riverview Plaza, Trenton, New Jersey 08625-0500.

### **FACTUAL ALLEGATIONS**

4. In 1997 the New Jersey Supreme Court was faced with “accounts of crumbling and obsolescent schools” that “inundate[d] the record.” *Abbott v. Burke*, 149 N.J. 145, 186 (1997) (“Abbott IV”). Based on voluminous evidence of “dilapidated, unsafe, and overcrowded facilities,” the Court concluded that capital deficiencies were among “the most significant problems” facing students in poor urban districts. *Id.* In so finding, the Court reaffirmed its prior holding in *Abbott v. Burke*, 119 N.J. 287, 390 (1990) (“Abbott II”), that “adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education].” *Id.* As the Court recognized, “[w]e cannot expect disadvantaged children to achieve when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them.” *Abbott IV*, 149 N.J. at 188.

5. In *Abbott v. Burke*, 153 N.J. 480 (1998) (“Abbott V”), the Court again reaffirmed that the State’s “constitutional obligation” under the “thorough and efficient clause,” N.J. Const. art. VIII, §4, includes the provision of adequate school facilities, underscoring the fact that the “grave state of disrepair” of Abbott school buildings “[has] a direct and deleterious impact on the education available to the at-risk children,” and “threatens [the students’] health and safety.” *Id.* at 519-20.

6. In *Abbott V*, based on an assessment of the facilities needs of the Abbott districts and proposals to finance necessary repair and construction of Abbott school buildings, ordered the State to promptly undertake “a multi-phase implementation plan for facilities improvements”

consistent with the State’s “commitment to provide facilities that are educationally adequate to permit the Abbott children” to achieve the State’s academic standards. *Abbott V*, 153 N.J. at 525.

7. In 2000, in response to the *Abbott* decisions, the Legislature passed the Educational Facilities Construction and Financing Act (“EFCFA”), N.J.S.A. 18A:7G-1 *et seq.* to implement the *Abbott* remedial orders related to facilities and to address the urgent facilities needs in the 31 poor urban districts subject to the Court’s remedial orders.

8. In 2007, New Jersey Legislature amended the EFCFA and created the New Jersey Schools Development Authority (“SDA”) to provide financing and undertake construction of school facilities projects approved by the DOE, through the OSF, in the 31 urban districts, which were renamed as SDA districts. N.J.S.A. 18A:7G-3.

9. Under the EFCFA, SDA districts must prepare a Long Range Facilities Plan (“LRFP”) every five years to determine school facilities needs. The plan must be approved by the DOE. N.J.S.A. 18A:7G-4. The LRFP must also include planning for “emergent health and safety concerns.” N.J.S.A. 18A:7G-4(e).

10. EFCFA further requires the DOE to develop “guidelines, criteria and format” for the districts’ submission of the LRFP, and for the submission of requests for approval of individual school facilities projects contained in the districts’ approved LRFP. N.J.S.A. 18A:7G-4(e). As required by the EFCFA, the DOE has adopted rules governing the districts’ submission, review and approval of facilities projects, including emergent projects. N.J.A.C. 6A:26-1.1.

11. To address emergent conditions in existing school buildings, an SDA district can request that the DOE amend the district’s LRFP and seek DOE approval of a specific school facilities project to address the emergent condition. Such emergent project requests may be submitted for approval either before or after approval of the district’s LRFP.

12. Upon information and belief, the DOE has approved an LRFP for each of the SDA districts.

13. N.J.A.C. 6A:26-3.16(c)-(f) governs the procedures for DOE review and approval of SDA districts' requests for emergent projects. Emergent projects 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.

14. Under N.J.A.C. 6A:26-3.16(e), the DOE "shall approve" a project as an emergent condition if, after an on-site inspection conducted by the DOE county superintendent, the OSF certifies that an emergent condition exists. *Id.*

15. After an emergent project is approved by the DOE, a project application is then forwarded to the OSF for review on an expedited basis. N.J.A.C. 6A:26-3.16(e)(2). The expedited review of an approved emergent project by the OSF consists of a determination that the project is in conformity with the district's LRFP and that the application is complete. N.J.A.C. 6A:26-3.3(a)-(o). Although no specific timeline is provided for such "expedited review," given that the review must be "expedited," the plain language of the regulation indicates that the time for review is less than the time for review of non-emergent projects (which is 90 days, with a 60 day extension available with written notice. N.J.A.C. 6A:26-3.3(b)).

16. If the application is denied, the district has 30 days to respond to the OSF and provide any supplemental information. N.J.A.C. 6A:26-3.3(d). If approved, DOE's OSF must then determine the scope of the work and eligible costs. N.J.A.C. 6A:26-3.16(e)(2).

17. Upon approval of the emergent project, the OSF must “promptly” prepare and submit a final project report to the SDA. The report must include details about the project, such as the location and costs. N.J.A.C. 6A:26-3.5(c).

18. Once a final project report is submitted by the OSF, the SDA must commence and complete the construction work to address and eliminate the emergent condition. N.J.A.C. 6A:26-3.5(a), (h).

19. Prior to 2008, the DOE approved a number of emergent projects and transferred those emergent projects to the SDA for construction. Upon information and belief, some or all of those projects have been undertaken or completed.

20. In early 2010, the SDA halted further construction of DOE approved facilities projects in SDA districts, including emergent projects, except for those already under construction or where bids for construction had been awarded.

21. In March 2011, the SDA released a revised capital plan for approved school facilities projects in SDA districts. This capital plan addressed new schools or major school renovation projects, but not emergent projects.

22. In May 2011, the DOE and SDA notified the SDA districts of the 2011 New Jersey Potential Emergent Projects Program (“PEPP”). This notice made clear that PEPP would be the process for SDA districts to submit emergent projects to the DOE for approval and subsequent construction by the SDA pursuant to the EFCFA and the DOE regulations. *See* Letter from DOE and SDA to Newark Superintendent C. Anderson, May 24, 2011, attached as Exhibit A; New Jersey 2011 PEPP Program Instructions, attached as Exhibit B.

23. In the PEPP notice, SDA districts were directed to identify all health and safety projects believed to be “emergent conditions” as defined in N.J.A.C. 6A:26-1.2, and submit, no later than June 20, 2011, a comprehensive list of those projects in electronic and paper format.

24. Based on information provided by the SDA, 28 SDA districts submitted 716 projects to the DOE for approval as emergent conditions and projects. Upon information and belief, in or around September 2011, the DOE advised the SDA districts via e-mail that of the initial 716 projects submitted, 320 projects were being placed on “short lists” that would be subject to further review by DOE as emergent projects.

25. Upon information and belief, the DOE did not provide the SDA districts with any written notice that the other 396 of the initial 716 projects were not approved as emergent projects, or provide any explanation for why those 396 projects were not placed on the “short lists” for further review.

26. Upon information and belief, in or around September 2011, the DOE began conducting site visits pursuant to N.J.A.C. 6A:26-3.16(e) to evaluate the SDA districts’ submitted emergent projects, but only for those projects placed on the DOE “short lists.”

27. Upon information and belief, by letter dated March 12, 2012, the OSF provided further information to the SDA districts with regard to the status of the emergent projects submitted in June 2011. In this letter, the DOE provided the districts with a summary classification of the projects into various categories, including “potential emergent projects,” “potential routine and/or required maintenance,” “potential capital maintenance,” and “potential school facilities.” *See* Letter from the SDA and DOE to Newark Superintendent C. Anderson, March 12, 2012, attached as Exhibit C.

28. In the March 12, 2012 letter, the OSF advised that SDA districts had 10 days to submit additional information on the classification of the districts' projects, as summarized in the letter. The letter does not approve or reject any specific project as an emergent project, and provides no time frame for when such determinations will be made by the DOE.

29. The OSF and DOE have failed to provide the SDA districts with final determinations as to whether the projects they submitted for review in June 2011 have been approved as emergent projects, as required by 6A:26-3.16(e).

30. The OSF and DOE have failed to issue any preliminary project report for any approved emergent projects, including scope of work and costs, to SDA districts for any of the projects submitted in June 2011 under PEPP, as required by N.J.A.C. 6A:26-3.5(c).

31. The OSF and DOE have failed to notify SDA districts of the transmission of any approved emergent projects submitted in June 2011 under PEPP to the SDA for remediation of a DOE certified emergent condition, as required by N.J.A.C. 6A:26-3.5(a), (h).

32. Upon information and belief, the SDA has not commenced or completed repairs on any projects and/or DOE certified emergent conditions for any of the emergent projects submitted by SDA districts in June 2011 under the PEPP program.

33. On January 9 and April 6, 2012, ELC notified the OSF of the DOE failure to undertake expedited review and issue written approvals or other determinations of the emergent projects submitted by SDA districts in June 2011 under PEPP. To date, ELC has received no response to these notifications. *See* Letters of January 9, 2012 and April 6, 2012 from ELC to DOE, attached as Exhibits D and E.

34. An analysis of the emergent projects submitted by SDA districts under PEPP shows a wide range of emergent conditions that impact the health and safety of the *Abbott*



Plaintiff schoolchildren and teachers and other staff in school buildings. For example, 15% of the projects involve a roof in need of repair, 8% involve upgrades or replacements to fire safety equipment, 8% involve exterior masonry in need of repair, 5% involve boilers in need of replacement, and 4% involve electrical systems in need of repairs or upgrades. *See* Analysis by F. Gilmore, MS, NJ Work Environment Council, Feb. 19, 2012, attached as Exhibit F).

**Count One**  
**(New Jersey Constitution)**

35. Petitioner repeats the allegations of paragraphs one through thirty-three as set forth fully herein.

36. Respondent has not issued written approvals or other determinations on the emergent projects submitted by the SDA districts in June 2011 under PEPP, nor has Respondent provided any other notice to SDA districts that it has completed preliminary project reports on any of these projects.

37. Respondent has not provided SDA districts written notice that emergent projects submitted in June 2011 under PEPP have been transmitted as approved emergent projects to the SDA for construction and remediation of a certified emergent condition.

38. The Respondent's failure to perform an expedited review and issue determinations of the emergent projects submitted in June 2011 under PEPP violates N.J. Const. art. VIII, § 4 and the *Abbott v. Burke* remedial orders requiring the State to finance, construct and remediate school facilities projects, including emergent projects, in a timely and effective manner.

**Count Two**  
**(Education Facilities Construction and Financing Act)**

39. Petitioner repeats the allegations of paragraphs one through thirty-seven as set forth fully herein.

40. The Respondent has not issued written approvals or other determinations on the emergent projects submitted by the SDA districts in June 2011 under PEPP, nor has Respondent provided any other notice to SDA districts that it has completed preliminary project reports on any of these projects.

41. Respondent has not provided SDA districts written notice that emergent projects submitted in June 2011 under PEPP have been transmitted as approved emergent projects to the SDA for construction and remediation of a certified emergent condition.

42. The Respondent's failure to perform an expedited review and issue determinations of the emergent projects submitted in June 2011 under PEPP violates the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1 *et seq.*, which requires Respondent to review and make determinations on school facilities projects submitted by SDA districts, including projects to address emergent health and safety conditions in school buildings in SDA districts.

**Count Three**  
**(DOE Implementing Regulations)**

43. Petitioner repeats the allegations of paragraphs one through forty-one as set forth fully herein.

44. The Respondent has not issued written approvals or other determinations on the emergent projects submitted by the SDA districts in June 2011 under PEPP, nor has Respondent

provided any other notice to SDA districts that it has completed preliminary project reports on any of these projects.

45. Respondent has not provided SDA districts any written notice that emergent projects submitted in June 2011 under PEPP have been transmitted as approved emergent projects to the SDA for construction and remediation of a certified emergent condition.

46. The Respondent's failure to perform an expedited review and issue determinations of the emergent projects submitted in June 2011 under PEPP violates DOE regulations implementing the EFCFA, N.J.A.C. 6A:26-3.16(c)-(f), which require Respondent to review all emergent projects submitted by SDA districts on an expedited basis; to issue written approvals of all emergent projects where an emergent condition has been certified; to prepare preliminary project reports on all approved emergent projects; and to transmit approved emergent projects to the SDA for construction and remediation of the certified emergent condition.

**Count Four  
(Agency Inaction)**

47. Petitioner repeats the allegations of paragraphs one through forty-five as set forth fully herein.

48. The Respondent has not issued written approvals or other determinations on the emergent projects submitted by the SDA districts in June 2011 under PEPP, nor has Respondent provided any other notice to SDA districts that it has completed preliminary project reports on any of these projects.

49. Respondent has not provided SDA districts written notice that emergent projects submitted in June 2011 under PEPP have been transmitted as approved emergent projects to the SDA for construction and remediation of a certified emergent condition.

50. The Respondent's failure to perform an expedited review and issue determinations of the emergent projects submitted in June 2011 under PEPP constitutes agency inaction that is arbitrary, capricious, and patently unreasonable, particularly in light of the threat to the health, safety and welfare of the *Abbott* Plaintiffs resulting from the emergent conditions in SDA district school buildings.

**WHEREFORE**, Petitioner demands the following relief:

A. A Declaratory Ruling that Respondent has violated Petitioner's rights as set forth above;

B. An Order requiring Respondent to issue written determinations within 30 days as to each of the 716 projects submitted by the SDA districts under the 2011 New Jersey Potential Emergent Projects Program, setting forth whether or not such projects will be approved as emergent projects and the reasons such projects are being approved or denied;

C. An Order requiring the Respondent to transmit projects approved as emergent to the SDA for construction on an expedited basis;

D. An Order preserving Petitioner's claims for attorney's fees for violations of constitutional and statutory rights, enforceable under N.J.S.A. 10:6-2; and

E. Such other relief as is equitable and just.

EDUCATION LAW CENTER

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*Attorneys for Petitioner*

**VERIFICATION**

David G. Sciarra, of full age, being duly sworn upon his oath according to law deposes

and says:

1. I am the executive director of Petitioner Education Law Center, as well as attorney for the Abbott plaintiffs in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

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David G. Sciarra  
Executive Director, Education Law Center

Sworn and subscribed to before me this  
24rd day of April, 2012

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Elizabeth Athos  
Attorney at Law  
State of New Jersey

# **EXHIBIT A**



## State of New Jersey

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

### SCHOOLS DEVELOPMENT AUTHORITY

P.O. BOX 991  
TRENTON, NJ 08625-0991

Marc Larkins  
*Chief Executive Officer*

### DEPARTMENT OF EDUCATION

P.O. BOX 500  
TRENTON, NJ 08625-0500

Christopher D. Cerf  
*Acting Commissioner*

May 24, 2011

Ms. Cami Anderson, State District Superintendent  
Newark Public School District  
2 Cedar Street  
Newark, New Jersey 07102-3015

**Title: 2011 POTENTIAL EMERGENT PROJECTS PROGRAM:  
EMERGENT STATUS DETERMINATIONS FOR A DISTRICT REQUIRED TO USE  
THE AUTHORITY TO UNDERTAKE A PROJECT, PURSUANT TO THE  
EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCE ACT (EFCFA);  
§1-30 and 57-71 of P.L. 2000, c.72; §14-17 of P.L. 2007, c.137; §8-11 of P.L. 2008, c.39.**

**RE: NEWARK PUBLIC SCHOOL DISTRICT #3570  
ESSEX COUNTY**

Dear Ms. Anderson:

As you may be aware, the New Jersey Schools Development Authority at its March 2, 2011 Board meeting approved the 2011 Capital Program by which \$100 million will be allocated to fund emergent projects in the 31 SDA Districts. Together the Authority and the New Jersey Department of Education are launching our second extensive State-wide effort since 2007 to identify and evaluate eligible emergent projects in over 475 school facilities. We will be working with you over the upcoming months to review your district's potential emergent issues that may be funded by this discrete allocation.

Please note that:

- **Only emergent capital projects are being advanced through this initiative.** Non-emergent rehabilitation and new construction are outside the scope of this initiative.
- **Emergency stabilization as well as routine and required maintenance are always the responsibility of the school district** and are outside the boundaries of eligibility for a School Facilities Project as defined under EFCFA.
- **Emergent condition** means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.
- **Emergent project** means a capital project 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.

In order to efficiently identify the universe of emergent projects to be included for evaluation in the 2011 Potential Emergent Projects Program, the Department and Authority are requesting that your district both **complete and return by email the attached spreadsheet AND return a signed/dated paper copy of the spreadsheet by Wednesday, June 22, 2011**. The addresses are included in the attached instructions. Include all health and safety capital maintenance projects that you believe are "emergent conditions" as defined in N.J.A.C. 6A:26-1.2. (If you have no potential emergent projects, type in "none" on first row.)

Once received, the Authority together with the Department will review all district's submittals, will determine what additional support materials are required, if a site visit(s) to your district is necessary, and schedule any such site visit(s). The district will receive further correspondence as additional action or information is required. We appreciate the district's cooperation to expedite this process.

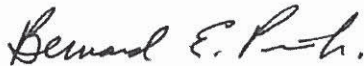
Due to limited funding, please be mindful that **a district may choose not to participate** in this 2011 Potential Emergent Projects program in whole or in part. Instead, an SDA district may include in its annual capital outlay budget and submit for approval one or more other capital school facilities projects if:

- The cost of each project does not exceed \$500,000, and,
- The Commissioner has first approved the inclusion of the project upon a demonstration by the district that its budget includes sufficient funds to finance the project.

A district may also withdraw funds from a capital reserve account for such purpose with the approval of the Commissioner; see N.J.S.A. 18A:7F-63 for more information.

We point out these alternatives because we anticipate that the identified limited funding for this program will not be sufficient to address all emergent needs in the 31 SDA districts. If you have any questions regarding this effort, please do not hesitate to contact Frank LoDolce of the Department at (609) 292-7078 or frank.lodolce@doe.state.nj.us.

Sincerely,



Bernard E. Piaia, Jr., Director  
NJDOE, Office of School Facilities  
BEP.FL.jrd

Sincerely,



Andrew Yosha, Vice President  
NJSDA, Program Operations  
AY.GV.rl

**Attachments: Potential Emergent Projects Program (PEPP) Spreadsheet, PEPP Instructions**

- c: Christopher Cerf, Acting Commissioner, NJDOE  
Marc Larkins, CEO, NJSDA  
Pam Castellanos, NJDOE Division of Field Services  
Greg Voronov, Emergent Projects Coordinator, NJSDA  
Alan Guenther, NJDOE Director of Public Information  
Lawrence Feinsod, Essex County, NJDOE, Office of the Superintendent of Schools  
Susan Kutner, Policy Director, NJDOE Office of School Facilities  
Frank LoDolce, Regional Director, NJDOE Office of School Facilities  
Jeanne Dunn, Emergent Projects Coordinator, NJDOE Office of School Facilities  
Anthony Brun, NJDOE Office of School Facilities  
Valerie Wilson, Newark Office of the School Business Administrator  
Steve Morlino, Newark Office of the District Facilities Director



# **EXHIBIT B**

# NEW JERSEY 2011 PEPP PROGRAM INSTRUCTIONS

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## EVALUATING SDA SCHOOL DISTRICT PROJECTS FOR EMERGENT STATUS

### PREFACE

Thank you for considering the 2011 New Jersey Potential Emergent Projects Program (PEPP) administered by the Department of Education together with the Schools Development Authority.

As stated in the accompanying letter, we recognize that **a district may choose not to participate in this 2011 Potential Emergent Projects program** in whole or in part. Instead, an SDA district may include in its annual capital outlay budget and submit for approval one or more other capital school facilities projects if:

- The cost of each project does not exceed \$500,000, and,
- The Commissioner has first approved the inclusion of the project upon a demonstration by the district that its budget includes sufficient funds to finance the project.

A district may also withdraw funds from a capital reserve account for such purpose with the approval of the Commissioner (see N.J.S.A. 18A:7F-63).

NOTE: PLEASE DO NOT INCLUDE ON THE ACCOMPANYING  
SPREADSHEET ANY PROJECTS THAT WILL BE SUBMITTED TO  
THE DEPARTMENT AS AN OTHER CAPITAL PROJECT.

**For all issues that the district chooses to be considered in the 2011 PEPP, please adhere to the following “Rubric for Understanding Emergent Status” and “Worksheet Guidelines.”**

It is very important to note that:

- **Missing vital information** (estimated GSF, etc.) will reduce our ability to expedite your emergent projects. Please provide all requested information as the potential emergent review process advances.
- **Inclusion of extraneous issues** that include non-school assets, new construction or other obvious non-emergent conditions will decelerate this emergent assessment program and reduce our ability to expedite worthy emergent projects.
- **Emergent issues are not to be combined with non-emergent issues** for any potential project; to do so may eliminate that potential project from consideration as an emergent condition and create months of investigation and review to clarify the situation.

For example: *Sample School* needs roof work. Its Section A roof needs only minor repairs, while Section B roof needs a full emergent replacement and Section C roof was just replaced. *Sample District* has submitted the entire roof for consideration. The State notes in its review that State paid for a roof replacement for *Sample School* as a project in 2003 and deems *Roof Issue at Sample School* not eligible for emergent status.

## WORKSHEET GUIDELINES

1. **READ** and follow the “Rubric” (begins on the next page) before attempting to identify emergent issues.
2. **ENTER** all identified potential emergent issues on the electronic version of the spreadsheet, listing each school separately:
  - a. Provide the three-digit **School Number**,
  - b. Provide the **School Name**,
  - c. Provide the **Building Facilities Name** (Programmatic Name may differ from Facilities Name),
  - d. Record each **System Deficiency** on a separate row, utilizing the drop-down box for system name,
  - e. Describe this **System Deficiency** concisely but fully,
  - f. Provide **Age of this Deficient System** or part of system in years,
  - g. Report all **System Repairs**:
    - i. **Mark “X”** for any of the years (2001 to 2011) that this system has been repaired, and,
    - ii. Provide a total of the **Cost** of the Repairs to this system (since 2001).
3. **WHEN THE SPREADSHEET IS COMPLETED:**
  - a. **EMAIL the \*.xls** as an attachment to email (do NOT send as a \*.pdf) to:  
[Project\\_App@doe.state.nj.us](mailto:Project_App@doe.state.nj.us), and,
  - b. **MAIL a paper SIGNED / DATED copy** (District Superintendent must sign) to:  
Frank LoDolce, Regional Director  
NJ Dept. of Education – School Facilities Office  
Post Office Box 500  
Trenton, New Jersey 08625-0500  
  
Both the paper and emailed copies are required for us to properly administer this program.

*Thank you. We very much appreciate in advance your careful attention to these Instructions (above Guidelines and the following Rubric), as we endeavor to expedite this process as much as possible.*

*If you have any questions, please do not hesitate to call Frank LoDolce of the NJ Department of Education at (609) 292-7078.*

2011 NJ PEPP

RUBRIC

FOR UNDERSTANDING EMERGENT STATUS

1. Please review and understand the following important terms from N.J.A.C. 6A:26-1.2:

- a. "Department" means the New Jersey Department of Education.
- b. "Emergency stabilization" means actions taken by a school district to correct and eliminate an actual or imminent peril to the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.
- c. "Emergent condition" means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and/or staff.
- d. "Emergent project" means a capital project 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.
- e. "Capital project" means a school facilities project, other capital project or land acquisition project.
- f. "School facility" means and includes any structure, building or facility used wholly or in part for educational purposes by a school district or community provider, and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities as defined in this section.
- g. "Other Facilities" means athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration.

*ACTION: When any asset is not immediately identifiable as a "school facility," a District should submit ASAP to the Department a formal request for categorization as "School Facility" or Other Facility." Cases in point: administration building with minimal classroom space, or a field house with a locker or weight room. For district use only:*

     N/A      OR           Request made to NJDOE on                      (DT).

- h. "School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Required maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

Did District review and understand the above-noted terms?

>>>      YES = CONTINUE;           NO = NOT ABLE TO DETERMINE EMERGENT STATUS

**2. Please review and answer this question to determine if it is an eligible facility:**

- a. The facility/space requiring emergent work is a School Facility used for educational purposes by a district, or is an ancillary facility that physically supports the school such as a building that houses wastewater, steam, power, etc. Building is not an “Other Facility.” (See term “g” in Part 1 of this Rubric.)

>>>  *YES = CONTINUE*;       *NO = NOT EMERGENT STATUS*

**3. Please review and answer these questions to determine if it is an emergent condition:**

- a. Facility’s condition is “so injurious or hazardous” that it causes an imminent peril to the health and safety of students and/or staff. Only the Department in conjunction with the County Superintendent has the regulatory authority to make the final determination.

Note: In addition to independent Department determinations of an emergent condition, the Department may acknowledge NJSDA determinations, NJDCA Code Violations or NJDEP Regulatory Violations, as well as the closure of a school facility or space within a school facility by any other regulating agency for suspected health and/or safety violations.

>>>  *YES = CONTINUE*;       *NO = NOT EMERGENT STATUS*

- b. Potential Emergent work requires a Capital Project, not merely emergency stabilization or routine/required maintenance to obtain a fix necessary to render the facility or space in the facility usable for its intended purpose for a period of five years, or at least until the next planned major rehabilitation of the facility as included in the District’s approved Long Range Facilities Plan.

>>>  *YES = CONTINUE*;       *NO = NOT EMERGENT STATUS*

---

**IF ALL YES’S ABOVE, THE DISTRICT HAS A  
POTENTIAL EMERGENT PROJECT.**

***NOW:***

**District** may enter all data for this issue on attached workbook spreadsheet \*.xls, carefully following the Worksheet Guidelines.

**Repeat** steps 2-3 of Rubric for each issue as required.

**When** worksheet is completed, transmit to Department per the Guidelines.

---

**We look forward to working with you to evaluate your facilities issues.**

# **EXHIBIT C**



## State of New Jersey

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

### SCHOOLS DEVELOPMENT AUTHORITY

Post Office BOX 991  
TRENTON, New Jersey 08625-0991

Marc Larkins  
*Chief Executive Officer*

### DEPARTMENT OF EDUCATION

Post Office BOX 500  
TRENTON, New Jersey 08625-0500

Christopher D. Cerf  
*Acting Commissioner*

March 12, 2012

Ms. Cami Anderson, State District Superintendent  
Newark School District  
2 Cedar Street  
Newark, New Jersey 07102

**Title: 2011 POTENTIAL EMERGENT PROJECTS PROGRAM (2011 PEPPs):  
DETERMINATION OF STATUS**

**FOR A DISTRICT REQUIRED TO USE THE NJSDA (AUTHORITY) TO  
UNDERTAKE A PROJECT, PURSUANT TO THE EDUCATIONAL FACILITIES  
CONSTRUCTION AND FINANCE ACT (EFCFA); P.L. 2000, c.72; P.L. 2007,  
c.137; N.J.S.A. 18A:7G-5 AND N.J.A.C. 6A:26-3.6 et seq.**

**RE: NEWARK SCHOOL DISTRICT #3570  
ESSEX COUNTY**

Dear Ms. Anderson:

On or about May 24, 2011 the New Jersey Department of Education ("DOE" or "the Department") together with the New Jersey Schools Development Authority ("SDA") requested each SDA District (formerly known as Abbott District) complete a spreadsheet identifying and describing any potential emergent conditions that may exist in the District's school facility(s). Emergent condition means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff. Your District responded with a listing of conditions that the District identified as potentially emergent. As part of the data collection and review process, the DOE in partnership with the SDA sent a site team to investigate some or all of these conditions; the site team may have added one or more conditions to your list during the visit(s).

Prior to any visit to your facility(s), your District was requested to provide additional information pertaining to repair history and warranty for such systems as roofs and boilers, and we may have requested further details or clarifications. After careful review of any such data supplied as well as information gathered during all site visits, a collective educational evaluation by DOE staff and professional review by SDA staff was performed.

## I. Category / Status

Based on our joint DOE/SDA evaluation and review, the identified conditions included on your initial list and any subsequently added to your list during the site visit process have been classified into one of the following four categories shown on this letter's Attachment:

- **RRM = Routine and/or Required Maintenance:** This condition has not been deemed to be emergent. Sufficient evidence was not provided to support its status as an EFCFA project, but rather, our understanding of this condition indicates that is more correctly categorized as routine and/or required maintenance as defined under N.J.A.C. 6A:26-1.2. The district may proceed to complete the maintenance item(s) without a project application to the Department.
- **CMP = Potential Capital Maintenance Project:** This condition has not been deemed to be emergent. Sufficient evidence was provided to support its status as a future EFCFA capital maintenance project. The District may prepare a CMP application and submit it to the Department for review. Without funding, this would be an "Other Capital" application.
- **SFP = Potential Schools Facilities Project:** This condition has not been deemed to be emergent. Sufficient evidence was provided to support its status as a future EFCFA new construction or capital rehabilitation project that does not include emergent capital maintenance. The District may prepare a CMP application and submit it to the Department for review. Without funding, this would be an "Other Capital" application.
- **EP = Potential Emergent Project:** Sufficient documentation was provided to support consideration of this condition as an Emergent Project. The SDA will undertake a full analysis of each condition to determine the scope of work; several conditions at a school may be combined into one. It is possible that EP conditions may be reconsidered by the DOE for RRM or CMP status if compelling new information supports a status change.

A "blank" in the category/status column of your list indicates one of several possibilities, including: We understand the condition has been remedied; the condition at time of site visit was not evident to District personnel nor our site visit team; the condition was combined with another; or, the condition is being resolved in some other way. See Comment column for details.

## II. Next Steps

**The District should carefully review the attached list and return any comments in writing within 10 business days of the date of this letter.** The District Superintendent may request further consideration of any of these findings with regard to "DOE/SDA Determination of Status" and/or the "District's Description of Deficiency." The Department together with the SDA will review any new documentation the District provides in support of a request for further consideration.

The District may proceed to repair any condition whose status is RRM; this does not require a project application or review by the Department. The District may proceed to submit an "Other Capital" project application for a project valued up to \$500,000 to address any condition whose status is CMP, SFP or EP; however, advancing an EP condition as an other capital project would render it ineligible for EFCFA funding.

The DOE will provide confirmation of status and preliminary scope of work after reviewing with the SDA any new documentation the District may provide, for any condition for which the District requests additional consideration. The DOE will then advance each condition or (group of conditions) to the SDA in accordance with the priorities listed below, with a State Project Number assigned, via a Pre-Construction Letter to the District Superintendent. These advancements will occur individually, compliant to the SDA's project development schedule.

The priorities that have been established for advancement of the EPs are as follows: 1) Fire Safety, 2) Structural, 3) Boiler/HVAC, 4) Electrical, 5) Domestic Water, 6) Building Envelope (i.e., Roof, Exterior Masonry, etc.), 7) All Others.



Next, after receipt of a Pre-Construction Letter, the SDA will contact the District regarding advancement of that SOW as an emergent project, reviewing the District's EPs with regard to final scopes of work (SOWs) and any assemblage of SOWs into a single scope.

In summary, once the District's 2011 PEPPs status list is finalized, the DOE/SDA will communicate with the District to advance each of the following actions:

1. The Preconstruction Letter; with a State Project Number(s) assigned, for District's EPs in accordance with the established priorities and SDA's development schedule, (DOE), then,
2. SOW Finalization; Finalization and possible combination of emergent scope(s) of work (SDA),
3. Determination of advancement method; e.g. SDA management or delegation to District (SDA),
4. Initiation and Completion of Project; Design, submittal/approval, and construction phases of the project (SDA).

Please be aware that prior to award of construction bids, projects must be submitted to and approved by DOE as an EFCFA project. Further, it is the District's responsibility to perform all emergency stabilization that may be needed until such time as the emergent conditions are corrected.

### III. Conclusions

This letter has provided a Determination with respect to the Status of conditions submitted to the Department by your District and guidance on Next Steps. The District may request further consideration of any of these findings with regard to "Determination of Status" and/or the "District's Description of Deficiency." The Department together with the SDA will review any new documentation the District provides in support of a request for further consideration.

Please contact your Educational Facilities Specialist Anthony Brun at the Department's Office of School Facilities (OSF) with any questions regarding this matter at (609) 984-7818 or [anthony.brun@doe.state.nj.us](mailto:anthony.brun@doe.state.nj.us), or you may contact OSF's Regional Director Frank LoDolce at (609) 292-7078 or [frank.lodolce@doe.state.nj.us](mailto:frank.lodolce@doe.state.nj.us). Thank you for your ongoing assistance of our efforts to help you improve your school facilities.

Sincerely,



Bernard E. Piaia, Jr., Director  
NJDOE, Office of School Facilities  
BEP:FL:jrd  
PO Box 500, Trenton, NJ 08625-0500

Sincerely,



Gregory Voronov, Managing Director  
NJSDA, Program Operations  
AY:GV:rl  
PO Box 991, Trenton, NJ 08625-0991

**enc: ATTACHMENT (List of 2011 PEPPs with Determination of Status)**

c: Christopher D. Cerf, Acting Commissioner, NJDOE  
Marc Larkins, CEO, NJSDA  
David C. Hespe, Chief of Staff, NJDOE  
Dave Corso, Assistant Commissioner, Administration and Finance, NJDOE  
Andrew Yosha, Vice President – Program Operations, NJSDA  
Justin Barra, Director of Communications, NJDOE  
Kristen MacLean, Director of Communications, NJSDA  
Lawrence Feinsod, Office of the Executive County Superintendent, Essex County  
John Ferraro, Office of the County Business Administrator, Essex County  
Frank LoDolce, Regional Director, OSF, NJDOE  
Anthony Brun, Educational Facilities Specialist, OSF, NJDOE  
Jeanne Dunn, Educational Facilities Specialist, Emergents Program, OSF, NJDOE  
Raymond Lindgren, Director, Educational Program Planning, Emergents Program, NJSDA  
Valerie Wilson, District School Business Administrator  
Steve Morlino, District School Facilities Director

# Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

COUNTY NAME/##: ESSEX 13  
 SUPERINTENDENT NAME: CAMI ANDERSON  
 DISTRICT CONTACT PERSON: STEVE MORLINO

DISTRICT NAME: NEWARK  
 DISTRICT ###: 3570  
 TITLE OF DISTRICT CONTACT: EXE. DIRECTOR, FACILITIES MANAGEMENT

Classification of the potential project(s) has four categories:  
 EP: Potential Emergent Project,  
 CMP: Potential future non-emergent Capital Maintenance Project,  
 SFP: Potential future Schools Facility Project, or,  
 RRM: Routine and/or Required Maintenance work.  
 A "Blank" indicates not an issue.  
 Condition is combined with another, or,  
 Condition is being resolved in some other way.  
 See "DOE/SDA Comments" below for more info.

## NJDOE and NJSDA Determination of Potential Emergent Issues 2011 Potential Emergent Projects Program (2011 PEPP)

This list resorted by School # and School Name, then by System, for ease of review. Deficiency Nos. maintained per district original list as much as possible.

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency <i>With possible comments/clarifications by DOE/SDA</i>	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOE/SDA Determination of Status (Category)	DOE/SDA Comments
67	004	NJ Regional Day ES	NJ regional day ES	Roof	Roofing system replacement	More than 20 yrs		District runs the program, but excluded from EFCFA as this building is owned by the State of NJ (NJ Dept. of Treasury has jurisdiction over its facilities).
26	010	Arts HS	Arts HS	Exterior Masonry	Exterior Masonry Repairs	1931	EP	SDA is to evaluate this issue and determine full scope of work.
120	010	Arts HS	Arts HS	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
50	010	Arts HS	Arts HS	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
57	020	Barringer 9th Academy	Barringer 9th Academy	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
21	039	(Dr. Wm.) Horton ES	(Dr. Wm.) Horton ES	Electrical	Emergency Generator obsolete, can not obtain parts, transfer switch failed-need Replacement	More than 49 years	CMP	Future CMP, interim RRM.
16	040	East Side HS	East Side HS	Electrical	Emergency Generator obsolete, can not obtain parts, transfer switch failed-need Replacement	More than 39 years	CMP	Future CMP, interim RRM.
30	045	Newark Vocational HS	Newark Vocational HS	Exterior Masonry	Exterior Masonry Repairs	1894	EP	SDA is to evaluate this issue and determine full scope of work.
11	045	Newark Vocational HS	Newark Vocational HS	Fire Safety	Fire Alarm System replacement-Outdated non-addressable high voltage FA system/equipment for which repair/replacement parts are not available	More than 55 years	CMP	Future CMP, interim RRM.
104	045	Newark Vocational HS	Newark Vocational HS	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
117	045	Newark Vocational HS	Newark Vocational HS	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
31	045	Newark Vocational HS	Newark Vocational HS	Windows	Water Infiltration	1890	EP	SDA is to evaluate this issue and determine full scope of work.
35	050	(Malcolm X) Shabazz	(Malcolm X) Shabazz	Exterior Masonry	Exterior Masonry Repairs	1914	EP	SDA is to evaluate this issue and determine full scope of work.. Reference State project # 3570-050-08-1400.
124	050	(Malcolm X) Shabazz	(Malcolm X) Shabazz	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
136	050	(Malcolm X) Shabazz	(Malcolm X) Shabazz	Other	<b>ADDED AT REQUEST OF DISTRICT 9/27/11: Sanitary/sewer drainage issues</b>	1914	RRM	<b>Repairs needed. District should coordinate with appropriate MUA.</b>
88	050	(Malcolm X) Shabazz	(Malcolm X) Shabazz	Roof	Partial roofing system/components replacement	More than 13 yrs	EP	SDA is to evaluate this issue and determine full scope of work. Ref. State Project # 3570-070-08-1400.
28	056	Technology HS	Technology HS	Exterior Masonry	Exterior Masonry Repairs	1920	RRM	Repairs needed.

Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency With possible comments/clarifications by DOE/SDA	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOE/SDA Determination of Status (Category)	DOE/SDA Comments
7	056	Technology HS	Technology HS	HVAC	Two roof top HVAC units failed beyond repair and need replacement	More than 36 years	RRM	Repairs needed.
46	056	Technology HS	Technology HS	Other	Water infiltration in Gymnasium	1920	RRM	Repairs needed.
126	056	Technology HS	Technology HS	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
71	056	Technology HS	Technology HS	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
73	057	University HS	University HS	Roof	Roofing system replacement	More than 20 yrs	CMP	Future CMP, interim RRM.
22	070	Weequahic HS	Weequahic HS	Electrical	Emergency Generators (2) failed beyond repair, need replacement	More than 18 years	CMP	Future CMP, interim RRM.
43	070	Weequahic HS	Weequahic HS	Exterior Masonry	Exterior Masonry Repairs ,roof, parapet walls, etc.	1933	EP	SDA is to evaluate this issue and determine full scope of work.
135	070	Weequahic HS	Weequahic HS	Exterior Masonry	<b>ADDED AT REQUEST OF DISTRICT 9/27/11: Roof parapet/masonry walls</b>	<b>1933</b>		<b>Repeated issue, eliminated from list.</b>
125	070	Weequahic HS	Weequahic HS	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
25	080	West Side HS	West Side High	Structural	Chimney Masonry Repairs	1926	EP	SDA is to evaluate this issue and determine full scope of work.
128	080	West Side HS	West Side HS	Electrical	Switch gear replacement	1926	EP	SDA is to evaluate this issue and determine full scope of work.
111	080	West Side HS	West Side HS	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
83	080	West Side HS	West Side HS	Roof	Partial roofing system/components replacement	More than 13 yrs	RRM	Repairs needed.
82	087	Warren Street ES	Warren Street ES	Roof	Roofing system replacement	More than 10 yrs	CMP	This would likely be a future Other Capital CMP with interim RRM, as school has been unoccupied since circa 2009.
48	170	Abington Avenue ES	Abington Avenue ES	Roof	Roofing system replacement	More than 12 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
44a	170	Abington Avenue ES	Abington Avenue ES	Exterior Masonry	<b>ADDED AT REQUEST OF DISTRICT: Masonry issues.</b>	unk	EP	<b>SDA is to evaluate this issue and determine full scope of work.</b>
13	180	Alexander Street ES	Alexander Street ES	Electrical	Emergency Generator obsolete, can no longer get parts need replacement	More than 46 years	CMP	Future CMP, interim RRM.
96	200	Ann street ES	Ann street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
49	200	Ann street ES	Ann street ES	Roof	Roofing system replacement	More than 13 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
32	220	Avon Avenue ES	Avon Avenue ES	Exterior Masonry	Exterior Masonry Repairs	1905	EP	SDA is to evaluate this issue and determine full scope of work.
81	230	W. Brown MS	W. Brown MS	Roof	Roofing system replacement	More than 20 yrs	CMP	This would likely be a future Other Capital CMP with interim RRM, as school has been unoccupied since circa 2009.
34	250	Bragaw Avenue ES	Bragaw Avenue ES	Exterior Masonry	Exterior Masonry Repairs	1928	RRM	Repairs needed.
51	250	Bragaw Avenue ES	Bragaw Avenue ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
86	270	Branch Brook ES	Branch Brook ES	Roof	Partial roofing system/components replacement	More than 20 yrs	RRM	Repairs needed.

Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency With possible comments/clarifications by DOE/SDA	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOE/SDA Determination of Status (Category)	DOE/SDA Comments
92	280	Broadway ES	Broadway ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
14	300	Burnet Street ES	Burnet Street ES	Electrical	Emergency Generator failed beyond repair, need replacement	More than 51 years	CMP	Future CMP, interim RRM.
40	300	Burnet Street ES	Burnet Street ES	Exterior Masonry	Exterior Masonry Repairs incl. front entrance.	1868	EP	SDA is to evaluate this issue and determine full scope of work.
132	300	Burnet Street ES	Burnet Street ES	Exterior Masonry	<b>ADDED AT REQUEST OF DISTRICT 9/27/11: Front entrance masonry Repairs</b>	1868	RRM	<b>Repeated issue, eliminated from list.</b>
97	300	Burnet Street ES	Burnet Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
79	300	Burnet Street ES	Burnet Street ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
47	330	Chancellor Avenue ES	Chancellor Avenue ES	Structural	Basement rooms water infiltration/repairs	1920	EP	SDA is to evaluate this issue and determine full scope of work.
52	330	Chancellor Avenue ES	Chancellor Avenue ES	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
53	335	Chancellor Ave Anx ES	Chancellor Ave ES: Annex	Roof	Roofing system replacement	More than 12 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
15	350	Cleveland ES	Cleveland ES	Electrical	Emergency Generator transfer switch failed beyond repair, need replacement	More than 22 years	CMP	Future CMP, interim RRM.
45a	350	Cleveland ES	Cleveland ES	Exterior Masonry	<b>ADDED AT SITE VISIT: Masonry at 3rd and 4th floors, water entering at north face.</b>	1933	RRM	<b>Repairs needed.</b>
98	350	Cleveland ES	Cleveland ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
45	350	Cleveland ES	Cleveland ES	Structural	Boiler Room Ceiling Slab repairs	1932	RRM	Repairs needed.
119	370	Dayton Street ES	Dayton Street ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
54	370	Dayton Street ES	Dayton Street ES	Roof	Roofing system replacement	More than 12 yrs	EP	Chancellor Avenue ANNEX roof. SDA is to evaluate this issue and determine full scope of work.
89	370	Dayton Street ES	Dayton Street ES	Roof	<b>Partial roofing system/components replacement</b>	<b>More than 12 yrs</b>		<b>Repeated issue, eliminated from list.</b>
58	380	Eighteenth Avenue ES	Eighteenth Avenue ES	Roof	Roofing system replacement	More than 20 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
27	380	Eighteenth Avenue ES	Eighteenth Avenue ES	Exterior Masonry	Exterior Masonry Repairs <b>(Changed to "Exterior Masonry")</b>	1871/1900	EP	SDA is to evaluate this issue and determine full scope of work.
56a	400	Fifteenth Avenue ES	Fifteenth Avenue ES	Other	<b>ADDED DURING SITE VISIT: Water infiltration. See also roof and masonry issues.</b>		CMP	<b>Fifteen Avenue ES is appears to be a district-owned facility that is 100% charter-school occupied and therefore not eligible for EFCFA monies. It appears projects would be other-capital CMPs.</b>
100	400	Fifteenth Avenue ES	Fifteenth Avenue ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	CMP	Fifteen Avenue ES is appears to be a district-owned facility that is 100% charter-school occupied and therefore not eligible for EFCFA monies. <b>It appears projects would be other-capital CMPs.</b>

## Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency With possible comments/clarifications by DOE/SDA	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOESDA Determination of Status (Category)	DOE/SDA Comments
56	400	Fifteenth Avenue ES	Fifteenth Avenue ES	Roof	Roofing system replacement	More than 20 yrs	CMP	SEE ALSO EXTERIOR MASONRY AND WATER INFILTRATION ISSUE; WRAP ALL UP IN ONE PROJECT IF POSSIBLE. Fifteen Avenue ES is appears to be a district-owned facility that is 100% charter-school occupied and therefore not eligible for EFCFA monies. <b>It appears projects would be other-capital CMPs.</b>
42	400	Fifteenth Avenue ES	Fifteenth Avenue ES	Exterior Masonry	Exterior Masonry Repairs	1891	CMP	SEE ALSO ROOF AND WATER INFILTRATION ISSUE; WRAP ALL UP IN ONE PROJECT IF POSSIBLE. Fifteen Avenue ES is appears to be a district-owned facility that is 100% charter-school occupied and therefore not eligible for EFCFA monies. <b>It appears projects would be other-capital CMPs.</b>
101	401	Harold Wilson	Harold Wilson	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
93	415	(Dr. E Alma) Flagg	(Dr. E Alma) Flagg	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
8	415	(Dr.E Alma) Flagg	(Dr.E Alma) Flagg	HVAC	Heat wheel needs replacement. Poor indoor air quality impacting learning as school has no windows	More than 27 years	EP	SDA is to evaluate this issue and determine full scope of work.
94	415	Ridge Street ECC	Ridge Street ECC	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
41	420	Fourteenth Avenue ES	Fourteenth Avenue ES	Exterior Masonry	Exterior Masonry Repairs	1906	EP	SDA is to evaluate this issue and determine full scope of work.
76	420	Fourteenth Avenue ES	Fourteenth Avenue ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
38	430	Franklin ES	Franklin ES	Exterior Masonry	Exterior Masonry Repairs	1889	RRM	Repairs needed.
118	430	Franklin ES	Franklin ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
5	435	(GW) Carver ES	(GW) Carver ES	HVAC	Roof top HVAC units for auditorium failed beyond repair and need replacement	More than 31 years	CMP	Future CMP, interim RRM.
84	435	(GW) Carver ES	(GW) Carver ES	Roof	Partial roofing system/components replacement	More than 20 yrs	RRM	Repairs needed.
9	440	(Dr. Wm.) Horton ES	(Dr. Wm.) Horton ES	Fire Safety	Fire Alarm System replacement-Outdated non-addressable high voltage FA system/equipment for which repair/replacement parts are not available	More than 46 years	CMP	Future CMP, interim RRM.
17	455	(Harriet) Tubman ES	(Harriet) Tubman ES	Electrical	Emergency Generator failed beyond repair, need replacement	More than 48 years	CMP	Future CMP, interim RRM.
59	455	(Harriet) Tubman ES	(Harriet) Tubman ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
2	460	Hawkins Street ES	Hawkins Street ES	Boiler	<b>(Changed from "HVAC" to "boiler.")</b> Boilers failed, truck mounted boilers, rental boilers since August 2010 costing NPS in excess of \$40,000 per year	More than 36 years	EP	SDA is to evaluate this issue and determine full scope of work.
44	460	Hawkins Street ES	Hawkins Street ES	Exterior Masonry	Exterior Masonry Repairs	1887	RRM	Repairs needed.
95	460	Hawkins Street ES	Hawkins Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.

Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency With possible comments/clarifications by DOE/SDA	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOE/SDA Determination of Status (Category)	DOE/SDA Comments
60	460	Hawkins Street ES	Hawkins Street ES	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
62	465	Ivy Hill ES	Ivy Hill ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
33	470	Hawthorne Avenue ES	Hawthorne Avenue ES	Structural	Exterior Masonry Repairs (Changed to "Structural")	1900	EP	SDA is to evaluate this issue and determine full scope of work.
121	470	Hawthorne Avenue ES	Hawthorne Avenue ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
61	470	Hawthorne Avenue ES	Hawthorne Avenue ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
63	477	J.F. Kennedy ES	J.F. Kennedy ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
102	480	Lafayette Street ES	Lafayette Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
127	480	Lafayette Street ES	Lafayette Street ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
74	490	Lincoln ES	Lincoln ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
64	495	L.A. Spencer ES	L.A. Spencer ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
36	500	Madison ES	Madison ES	Exterior Masonry	Exterior Masonry Repairs	1890/1926	EP	SDA is to evaluate this issue and determine full scope of work.
123	510	Maple Ave ES Annx	Maple Ave ES Annx	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
90	510	Maple Ave ES Anx	Maple Ave ES Anx	Roof	Partial roofing system/components replacement	More than 20 yrs	RRM	Repairs needed.
134	510	Maple Avenue ES	Maple Avenue ES	Electrical	ADDED AT REQUEST OF DISTRICT 09/27/11: Replace Main Electrical Distribution panel in Boiler room	1924	RRM	Repairs needed.
122	510	Maple Avenue ES	Maple Avenue ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
29	510	Maple Avenue ES	Maple Avenue ES	Exterior Masonry	Exterior Masonry Repairs (Changed to "Exterior Masonry")	1924	EP	SDA is to evaluate this issue and determine full scope of work.
18	517	(Dr.) MLK Jr. ES	(Dr.) MLK Jr. ES	Electrical	Emergency Generator failed beyond repair, need replacement	More than 49 years	CMP	Future CMP, interim RRM.
55	517	(Dr.) MLK Jr. ES	(Dr.) MLK Jr. ES	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
99	517	(Dr.) MLK Jr. ES	MLK Jr. ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
65	520	McKinley ES	McKinley ES	Roof	Roofing system replacement	More than 13 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
10	530	Miller Street ES	Miller Street ES	Fire Safety	Fire Alarm System replacement-Outdated non-addressable high voltage FA system/equipment for which repair/replacement parts are not available	More than 49 years	CMP	Future CMP, interim RRM.
87	530	Miller Street ES	Miller Street ES	Roof	Partial roofing system/components replacement	More than 20 yrs	CMP	Future CMP, interim RRM.
103	560	West Side Academy (aka old Morton ES)	West Side Academy	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.

### Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency With possible comments/clarifications by DOE/SDA	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOE/SDA Determination of Status (Category)	DOE/SDA Comments
85	560	West Side Academy (aka old Morion ES)	West Side Academy	Roof	Partial roofing system/components replacement	More than 20 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
6	575	R. Hernandez ES	R. Hernandez ES	HVAC	52 classroom HVAC units failed beyond repair and need replacement	More than 26 years	RRM	Repairs needed.
75	575	R. Hernandez ES	R. Hernandez ES	Roof	Roofing system replacement	More than 15 yrs	RRM	Repairs needed.
3	580	Newton Street ES	Newton Street ES	Boiler	(Changed from "HVAC" to "boilers.") Boilers and related components beyond useful life and need replacement	More than 43 years	RRM	Repairs needed.
19	580	Newton Street ES	Newton Street ES	Electrical	Emergency Generator failed beyond repair, need replacement	More than 17 years	CMP	Future CMP, interim RRM.
105	580	Newton Street ES	Newton Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
86	580	Newton Street ES	Newton Street ES	Roof	Roofing system replacement	More than 10 yrs	RRM	Repairs needed.
106	580	Oliver Street School	Oliver Street School	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
116	580	Oliver Street School	Oliver Street School	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
77	580	Oliver Street School	Oliver Street School	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
12	600	Peshine Ave ES	Peshine Ave ES	Fire Safety	Fire Alarm System replacement-Outdated non-addressable high voltage FA system/equipment for which repair/replacement parts are not available	More than 28 years	CMP	Future CMP, interim RRM.
110	600	Peshine Ave ES	Peshine Ave ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
112	600	Peshine Ave ES	Peshine Ave ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
68	600	Peshine Ave ES	Peshine Ave ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
68A	600	Peshine Ave ES	Peshine Ave ES	Exterior Masonry	ADDED DURING SITE VISIT: EXTERIOR MASONRY.		EP	SDA is to evaluate this issue and determine full scope of work.
1	610	Ridge Street ES	Ridge Street ES	Boiler	Boilers failed, truck mounted boilers, rental boilers since 2005 costing NPS in excess of \$40,000 per year	More than 40 years	EP	SDA is to evaluate this issue and determine full scope of work.
39	610	Ridge Street ES	Ridge Street ES	Exterior Masonry	Exterior Masonry Repairs	1911	RRM	Repairs needed.
91	610	Ridge Street ES	Ridge Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
78	610	Ridge Street ES	Ridge Street ES	Roof	Roofing system replacement	More than 20 yrs	RRM	Repairs needed.
37	615	(Roberto) Clemente ES	(Roberto) Clemente ES	Exterior Masonry	Exterior Masonry Repairs	1883	RRM	Repairs needed.
69	615	R. Clemente ES	R. Clemente ES	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
70	635	Samuel Berliner ES	Samuel Berliner ES	Roof	Roofing system replacement	More than 13 yrs	RRM	Repairs needed.
109	640	South Street ES	South Street ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.

Tally Sheet for 2011 PEPP with NJDOE / NJSDA Determination of Status

System Deficiency No. (See District's Original List)	School ###	School Name	School Building Name	Deficient System (Select from drop down menu)	District's Description of Deficiency <i>With possible comments/clarifications by DOE/SDA</i>	Age of Deficient Part/System to be Replaced (In Years, +/-)	DOESDA Determination of Status (Category)	DOESDA Comments
113	640	South Street ES	South Street ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
131	670	South 17th Street ES	South 17th Street ES	Exterior Masonry	ADDED ISSUE AT REQUEST OF DISTRICT 09/27/11: Front entrance masonry Repairs	1911	RRM	Limited scope; Repairs needed.
20	670	South Seventeenth Street ES	South Seventeenth Street ES	Electrical	Emergency Generator failed beyond repair, need replacement, for emergency egress/exit lighting?	More than 47 years	RRM	Repairs needed.
23	690	Old Speedway ES	Old Speedway ES	Electrical	Emergency Generator failed beyond repair, need replacement	More than 13 years	CMP	This would likely be a future Other Capital CMP with interim RRM, as school has been unoccupied since circa 2009.
80	690	Old Speedway ES	Old Speedway ES	Roof	Roofing system replacement	More than 20 yrs	CMP	This would likely be a future Other Capital CMP with interim RRM, as school has been unoccupied since circa 2009.
4	710	Sussex Avenue ES	Sussex Avenue ES	Boiler	(Changed from "HVAC" to "boilers.") Two Boilers failed beyond repair, three required to heat the building. Need to replace two boilers.	More than 21 years	EP	SDA is to evaluate this issue and determine full scope of work.
108	710	Sussex Avenue ES	Sussex Avenue ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
114	710	Sussex Avenue ES	Sussex Avenue ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
72	715	Thirteenth Avenue ES	Thirteenth Avenue ES	Roof	Roofing system replacement	More than 12 yrs	RRM	Repairs needed.
133	750	Wilson Avenue ECC This is an annex building offsite from but part of the Wilson Avenue School Program at 13 Patterson Street; Uses 750 school number.	Wilson Avenue ECC	Exterior Masonry	ADDED AT REQUEST OF DISTRICT 9/27/11: Masonry Cornice Repairs		RRM	Repairs needed.
24	750	Wilson Avenue ES	Wilson Avenue ES	Exterior Masonry	Exterior Masonry Repairs other than Chimney	1881	EP	SDA is to evaluate this issue and determine full scope of work.
107	750	Wilson Avenue ES	Wilson Avenue ES	Other	Parking /Play surface Repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
115	750	Wilson Avenue ES	Wilson Avenue ES	Other	Sidewalk repairs-Unsafe conditions	More than 50 yrs	RRM	Repairs needed.
129	750	Wilson Avenue ES	Wilson Avenue ES	Other	ADDED AT REQUEST OF DISTRICT 9/27/11: Mold/Asbestos Remediation and Room repair See also window replacement	1881	RRM	Repairs needed.
130	750	Wilson Avenue ES	Wilson Avenue ES	Windows	ADDED AT REQUEST OF DISTRICT 9/27/11: Windows Replacement See also mold/asbestos	More than 50 yrs	EP	SDA is to evaluate this issue and determine full scope of work.
137								
138								
139								
140								



# **EXHIBIT D**

# ELC EDUCATION LAW CENTER

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January 9, 2012

VIA EMAIL AND REGULAR MAIL

Bernie Piaia, Director  
Office of School Facilities  
Department of Education  
P.O. Box 500  
Trenton, NJ 08625-500

Re: 2011 Potential Emergent Projects Program

Dear Director Piaia:

Education Law Center (ELC) works to ensure implementation of school facilities improvements in Schools Development Authority (SDA) districts, pursuant to the Educational Facilities Construction and Financing Act (EFCFA) and the Abbott v. Burke rulings. On behalf of school children in SDA districts, we submit this letter regarding the Department of Education's (DOE or Department) implementation of the 2011 New Jersey Emergent Projects Program (PEPP). Launched in May 2011, PEPP is a joint initiative of the DOE and the SDA to identify and evaluate potential emergent conditions in those districts pursuant to N.J.A.C. 6A:26-3.16 and, after certifying the existence of an emergent condition, to advance applications for emergent projects in order to remediate such conditions on an expedited basis pursuant to N.J.A.C. 6A:26-3.3.

Pursuant to PEPP instructions issued by the DOE and SDA, the SDA districts were directed to submit lists of conditions requiring remediation through emergent projects to the DOE in June 2011. By letter from the DOE and SDA dated May 24, 2011, the districts were advised to "identify the universe of emergent projects" so the DOE, through the Office of School Facilities (Office), could "evaluate potential emergent projects in over 475 school facilities" in SDA districts statewide. It is our understanding that most, if not all, districts, submitted lists of potential emergent conditions projects to your Office for review and approval in accordance with these instructions.

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For example, the Newark district submitted a list identifying 128 potential emergent conditions projects in various school facilities throughout the district. Similarly, the Camden district submitted a list that included 158 potential emergent projects in that district's facilities.

It is also our understanding that, at some point in August or September 2011, each SDA district received from the DOE, via email, a list of potential emergent projects substantially reduced from the districts' initial submission. The only information transmitted to the districts was that DOE would conduct site visits, as required by N.J.A.C. 6A:26-3.16(e), to determine eligibility as emergent projects for those on the reduced list, termed a "short list." Neither the "short list" nor the transmittal email contained any explanation, determination or information setting forth the reasons why substantial numbers of potential emergent projects were not approved as a "school facilities project for an emergent condition" under N.J.A.C. 6A:26-3.16(e) and not eligible for further review by the Division and remediation by the SDA as an emergent project pursuant to N.J.A.C. 6A:26-3.3.

For example, the Newark district, on September 20, 2011, received, via email, a short list from DOE that included only 35 of the 128 emergent projects initially submitted by the district, and indicated that site visits would only be conducted for the short list projects. Similarly, the Camden district received a DOE short list containing only 48 of the 158 potential emergent projects submitted by the district. Neither district received any explanation, information or determination from the DOE or SDA specifying the reasons why significant numbers of projects were removed from further consideration.

The absence of any written determination with specific reasons for eliminating potential emergent projects from further review appears to directly conflict with the requirements of N.J.A.C. 6A:26-3.16(d). Under this regulation, your Office is required to "approve a school facilities project for an emergent condition" if, after an on-site inspection, the county superintendent certifies "that an emergent condition exists." It is clear with respect to those potential emergent projects submitted by SDA districts through PEPP, and then removed from consideration through the distribution of "short lists," that the DOE did not even conduct site visits, let alone provide a written determination or explanation of reasons, before eliminating a significant number of potential emergent projects from review and final consideration.

Moreover, it is our understanding that, even with regard to those potential projects included on the "short lists," the DOE has yet to certify that "an emergent condition exists," N.J.A.C. 6A:26-3.16(d)(1), and, upon approval, conducted the requisite review, pursuant to N.J.A.C. 6A:26-3-3(a) through (o), "on an expedited basis." N.J.A.C. 6A:26-3.16(d)(2). Not only does this regulation require the certification of an emergent condition be completed on an "expedited basis," but also, under N.J.A.C. 6A:26-3.1(d) and (e), the DOE must make a final determination, including preliminary eligible costs, within 90 days, for transmittal to the SDA. These expedited timeframes are crucial given that these projects relate to potential imminent hazards to the health and safety of students, teachers and other staff.

Accordingly, we request that you provide a detailed response to the above described concerns related to implementation of the PEPP program, including the standards or criteria used to eliminate potential emergent condition projects from the initial lists submitted by SDA districts, and any information related to the preparation and distribution of the reduced or "short list" of potential projects. Further, we request that you explain why the Department has failed, to date, to issue any determinations, including certifications of emergent conditions, on those projects on the DOE-short list, along with a timetable for review and transmittal to the SDA.

As you know, the EFCFA and the Abbott rulings require the DOE and SDA to address all facilities needs in SDA districts, including emergent repairs in existing buildings. Because this matter involves conditions that, if not promptly remediated, directly impact the health and safety of thousands of students, teachers and staff in SDA districts, we request that you provide a response within ten (10) days of receipt of this letter.

Please do not hesitate to contact me to discuss this matter with you further. I look forward to your response.

Sincerely,



David G. Sciarra  
Executive Director

Cc: Acting Commissioner Christopher Cerf  
Marc Larkins, CEO, SDA  
Deputy Attorney General Michael Walters

# **EXHIBIT E**



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April 6, 2012

Via E-Mail and Regular Mail

Bernie Piaia, Director  
Office of School Facilities  
Department of Education  
P.O. Box 500  
Trenton, NJ 08625 - 500

Re: 2011 POTENTIAL EMERGENT PROJECTS PROGRAM

Dear Director Piaia:

We refer to our letter to you dated January 9, 2011, regarding the 2011 New Jersey Potential Emergent Projects Program ("PEPP"). As you know, the Education Law Center ("ELC") works to ensure the implementation of school facilities improvements, including emergent projects, in Schools Development Authority ("SDA") districts pursuant to the Educational Facilities Construction and Financing Act ("EFCFA") and the Abbott v. Burke rulings. On behalf of the Plaintiff school children in the Abbott v. Burke litigation (the "Abbott Plaintiffs"), we submit this second letter regarding the PEPP.

As noted above, by letter dated January 9, 2012, we requested a response from the Department of Education ("DOE") to our concerns regarding the implementation of the PEPP, including, but not limited to, an explanation for why the DOE has failed to issue expedited determinations on the approximately 760 projects submitted by SDA districts for review as emergent conditions under PEPP. To date, we have received no response to our January 9, 2012 letter. Further, as we explain below, the DOE has yet to issue appropriate determinations on these projects even though the SDA districts submitted the projects for your review in June 2011, nearly 10 months ago.

We are in receipt of letters dated March 12, 2012 to each SDA district from the DOE and SDA which purport to provide a "Determination of Status" with respect to the projects submitted for expedited review under PEPP. These letters, however, do not

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provide any certification as to emergent conditions or approval of the school facilities projects as emergent, including the requisite determination of the preliminary eligible project costs. Instead, the letters make reference to a certain number of "potential" emergent projects, and indicate that the DOE will conduct further reviews, without providing any timeline for issuing final project approvals and cost determinations.

The March 12 letters do not, on their face, comport with the applicable regulations, which require the DOE, upon certification of an emergent condition, to approve the project as emergent and issue a final determination, on an expedited basis, of preliminary eligible project costs. See N.J.A.C.6A:26-3.16(e)(2)-(3) and 3.3(a)-(o). Indeed, such approvals and final determinations by your Office are necessary for submission of a preliminary project reports to the SDA, a prerequisite for the SDA to promptly repair and complete emergent projects in SDA districts. N.J.A.C 6A:26-3.5.

Accordingly, in view of the imminent threat to the health, safety and well-being of the Abbott school children that may be presented by hundreds of outstanding projects submitted by the SDA districts, and the failure of the DOE to address these conditions on an expedited basis, we request that the DOE issue, in writing, appropriate final determinations for all projects submitted by the SDA districts under the PEPP no later than 10 days from receipt of this letter. If final decisions as to these projects are not forthcoming, we will have no alternative but to take legal action to ensure compliance with the EFCFA and implementing regulations, and the Abbott facilities mandates.

Please do not hesitate to contact me to discuss this matter further. We look forward to your prompt response.

Sincerely,



David G. Sciarra  
Executive Director

Cc: Acting Commissioner Christopher Cerf  
Marc Larkins, CEO, SDA  
Deputy Attorney General Michael Walters  
SDA District Superintendents

# **EXHIBIT F**



## Number and per cent of schools with each type of deficient system

Type of system	No. of schools (% of 700 schools)
Roof in need of repair	102 (15)
HVAC in need of replacement of non-functioning parts or controls, or in some cases, of entire system	77 (11)
Exterior masonry in need of repair	55 (8)
Fire safety, such as need for upgrade or replacement of alarms, smoke detectors, fire curtains, elevators or sprinklers; or improved egress	55 (8)
Boilers in need of replacement	35 (5)
Doors in need of repair or replacement	34 (5)
Windows in need of repair or replacement	32 (5)
Electrical system in need of repairs or upgrades	30 (4)
Potable water to kitchen out of compliance w/ law	17 (2)
Various bathroom plumbing and ventilation problems	11 (2)
Security systems in need or repair or upgrade	11 (2)
Elevators in need of repair or replacement (overlaps with Fire safety)	11 (2)

## Deficiencies pointing to safety and health issues for students and staff

Note that not all deficiency reports are specific enough to ascertain whether they point to health and safety problems

Type of problem	Specific nature of problem	Locations
Exterior leaks in roof or masonry	Roof and exterior masonry damage resulting in water infiltration and damage to interior walls, potentially or actually resulting in mold (IAQ problem)	1 school each in East Orange, Hoboken, Irvington, Pleasantville and Salem. <i>Note:</i> only East Orange reports mold. 3 schools each in Elizabeth 2 schools in West New York
Exterior leaks in roof or masonry	Roof leaks caused unsafe stairs (not clear if stairs are slippery, or ceiling/walls are crumbling or both)	2 schools in Asbury Park
Structural	Stairway ceiling collapsed, making stairways unsafe (cause not stated)	3 schools in Camden
Exterior leaks in roof or masonry	Water leaks leading to stair damage	1 school in Jersey City
HVAC	Lack of air conditioning causing high temperatures, notably a problem for asthmatics	1 school each in Asbury Park and Perth Amboy
HVAC	System or parts of system non-functional or semi-functional, resulting in lack of heat, air conditioning and/or any ventilation in some areas of school, resulting in compromised IAQ and potential temperature extremes	2 schools in Bridgeton City 1 school each in Camden, Hoboken, Plainfield, Salem City, Vineland 3 schools each East Orange, Pleasantville 5 schools each in Newark, Paterson City, Trenton
HVAC	No outside air provided by system	1 school in Hoboken
HVAC	Unit ventilator inoperable or in need of repair	1 school each in Irvington, Trenton 2 schools in Passaic City
HVAC	No local exhaust for grinding station, causing potential for eye and skin injury from high-speed particles	1 school in Irvington
Fire safety	Fire alarm and/or smoke detectors need to be replaced	2 schools each in Bridgeton City, Pleasantville 5 schools in Hoboken 4 schools in Newark 3 schools in Vineland
Fire safety	sprinkler system need to be installed for first time or replaced	2 schools in Camden 3 schools in Garfield 1 school each in Passaic,

		Trenton, Gloucester City
Fire safety	Need various upgrades, including elevators, fire curtains and improved egress	9 schools in Trenton 3 in Passaic 1 school each in Gloucester, Union City

## School districts ranked by number of deficiencies

District	Number of deficiencies	Most common deficiencies
Newark	129	Roof (43)
Trenton	99	Other (21), electrical (14)
Camden	95	Other (42), electrical (11)
Irvington	71	Other (17), HVAC (13)
Orange	48	Other (25), HVAC (8)
Passaic	40	HVAC (9)
Jersey City	40	Other (16), roof (7)
Hoboken	39	Other (18)
Pleasantville	29	Other (10), HVAC (7)
Union City	21	Windows (6)
Paterson	15	HVAC (7)
Garfield	13	Roof/exterior masonry/fire safety (3 each)
East Orange	11	Boiler/HVAC (2 each)
Elizabeth	10	Exterior masonry (4), roof (3)
Perth Amboy	10	HVAC (4)
Harrison	9	Structural (4), roof (3)
Asbury Park	9	Roof (3), HVAC (2)
Gloucester City	8	Other (3), fire safety (2)
West New York	8	Structural (5)
Bridgeton City	6	HVAC/fire safety (2 each)
Vineland	4	Fire safety (3)
Plainfield	4	Roof (2)
Keansburg	3	Other (3)
Salem City	3	HVAC/roof/exterior masonry (1 each)
Burlington	1	Roof (1)
Pemberton	1	Security (1)
Millville	1	Roof (1)
Phillipsburg	0	
Neptune	0	
Long Branch	0	