



Education Law Center

Standing Up for Public School Children

August 31, 2006

Hon. Lucille Davy, Acting Commissioner
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: FY2006 Annual Report on School Construction Program

Dear Commissioner Davy:

We are writing to express our concern about the recent FY2006 Annual Report on the School Construction Program (<http://www.state.nj.us/njded/facilities/ar/2006.pdf>). By omitting critical information needed to make key decisions concerning the program, the report fails to provide the Legislature and stakeholders with the minimum of information required by law. Moreover, the report, as issued, does not contain information that is crucial to fulfill your Office's constitutional obligation under the Abbott rulings to seek and secure funds for necessary school construction from the Legislature.

On December 19, 2005, the Supreme Court ordered the Department of Education to submit an annual report, as provided by N.J.S.A. 18A:7G-24, "to ensure a predictable and uniform manner by which all parties are provided the requisite information needed to assess the progress of the school facilities construction and the need for further appropriations." The FY 2006 Annual Report issued on August 17, 2006 neither provides the information necessary to assess the progress of the facilities construction program nor the need for further appropriations.

First, the report is devoid of recommendations to improve the program or to continue funding. While indicating the need to adjust the aggregate principal amount of bonds, notes or other obligations "for the School Construction program to move forward" (p. 11), the report fails to provide information as to how much additional funding is needed. The Legislature is thus deprived of DOE's perspective on outstanding constitutional needs.

Second, the major workload for the DOE during this year, the approval of the revised five-year Long Range Facilities Plans, is not even mentioned in the report. Information from these plans is critical to the decision-making process for future funding of the program. Indeed, members of the Legislature have publicly asked DOE for this information during two recent hearings of the Joint Committee on the Public Schools.

The LRFPS were due by October 2005 and the Court ordered a final submission deadline for January 15, 2006. According to N.J.S.A. 18A:7G-4(i), DOE had sixty days to approve the completed LRFPS, but, to date, there is no information available on the number of districts, Abbott and regular operating, who have received letters of approval for the 2005 LRFPS. (A few districts have told us that they have received letters stating that they have met reporting requirements, but not that their plan is approved.) The Legislature cannot make informed decisions about the school construction program without having received a complete status report on the submission and approval of the 2005 LRFPS.

Third, the report fails to address DOE capacity to administer its duties within the school construction program. Information recently obtained by ELC shows that 11 of the 25 staff positions in the Division of Facilities are vacant. The workload to review and approve the LRFPS for nearly 600 districts is an overwhelming, technical task, requiring a professional staff familiar with planning, engineering, and architecture. The Legislature needs complete information about current staff capacity and its effect on approval processes, and about staff upgrades and increases needed to expedite the approval processes.

In addition to the critical information that is missing from the report, the information provided is ambiguous, inconsistent and often misleading. ELC has concerns about the following:

- The report explains the DOE's approval process, but the approvals listed in the table are not tied to the size or cost (minor rehabilitation projects are mixed with major renovation projects);
- The approvals are not tied to levels or sources of funding (some projects with approvals have been funded through district budgets or municipal bonds);

- Project approvals are not tied to SCC's Capital Plan - some projects listed have been suspended due to lack of funds;
- Some of the information provided is incorrect (e.g., an addition to Newark's Malcolm X. Shabazz High School has not been submitted to DOE by the district and a new high school for Phillipsburg has not been completed); and
- The table listing projects constructed by SCC with the duration of time for project completion mixes health and safety projects with major construction projects creating a questionable result.

In light of these serious deficiencies, ELC requests that, by September 15, 2006, the DOE issue a revised FY2006 report to provide the Legislature and the public with an accurate, comprehensive report on the school construction program with information on the LRFP approval process. We are ready to work with DOE officials to assist in making these necessary revisions, and to ensure the DOE fulfills its constitutional duties to the Abbott schoolchildren.

Thank you for your anticipated cooperation in this regard.

Sincerely,

David Sciarra, Esq.
Executive Director

Cc: Hon. Governor Jon Corzine
Scott Weiner, SCC Transitional CEO
Nancy Kaplan, Assistant Attorney General
Heather Howard, Director of Policy and Planning
Janellen Duffy, Education Policy Analyst
Gordon MacInnes, Assistant Commissioner of Education
Richard E. Shapiro, Esq.
Hon. Richard J. Codey, NJ Senate
Hon. Wayne R. Bryant, NJ Senate
Hon. Bernard F. Kenny, NJ Senate
Hon. Leonard Lance, NJ Senate
Hon. Louis D. Greenwald, NJ Assembly
Hon. Joseph R. Malone, NJ Assembly
Hon. Nellie Pou, NJ Assembly
Hon. Joseph J. Roberts, NJ Assembly
Members, Joint Committee on the Public Schools