

Via Electronic and Regular Mail

May 27, 2016

Charles McKenna, CEO
Schools Development Authority
32 E Front Street
Trenton, NJ 08625

David C. Hespe, Commissioner
Department of Education
200 Riverview Plaza
Trenton, NJ 08625

Re: Abbott v. Burke: School Facilities Mandates

Dear Mr. McKenna and Commissioner Hespe:

Thank you for meeting last month to discuss urgent issues pertaining to implementation of school facilities remediation and improvements in SDA districts, as mandated in the Abbott v. Burke rulings. As follow-up, I am writing to bring to your attention several items requiring action by your respective agencies that must be undertaken and completed in an expedited manner. These are:

1) **Elevated Lead:** We underscore our request for your agencies to immediately commence a Potential Emergent Projects (PEP) initiative designed to obtain critical information from the SDA districts on the potential emergent repairs that may be needed to remediate elevated lead in the water systems of SDA district schools. Elevated lead in the water systems in these schools clearly meets the definition of an emergent repair under the Education Facilities Construction and Financing Act (EFCFA) and regulations. We again repeat that your agencies have an affirmative obligation to, at a minimum, gather information from the districts to be in a position to assess and evaluate what facilities emergent repairs or capital maintenance projects may be needed to remedy this potentially harmful condition.

2) **Additional Capital Funding:** Since the SDA has essentially allocated the remainder of available funds to projects in the current capital plan, there are no funds available to undertake additional and urgently needed capital projects in SDA districts. It is critical, therefore, that your agencies develop and establish a new capital plan according to the process set forth in the facilities statute and regulations. The next steps include:

a) **Final approval of the revised Hoboken and Paterson Long-Range Facilities Plans (LRFPs):** These are the only two SDA district LRFPs requiring final Department of Education (DOE) approval or, if they have been approved, made available on DOE's website.

b) **DOE Needs Assessment:** Based on the completed LRFP's, DOE must prepare a revised educational facilities needs assessment for the SDA districts, including an educational priority ranking of all facilities projects based upon the Commissioner's determination of critical need. N.J.S.A. 18A:7G- 5m(1)-(2). The DOE conducted a needs

assessment in 2013 based on the 2007 LRFPs. The needs assessment and priority rankings must be revised based on the recently completed LRFPs.

c) **Statewide Strategic Capital Plan:** Based on the project priority rankings, the SDA, in consultation with the DOE and SDA districts, can then establish a new statewide strategic plan for SDA capital facilities projects. This plan will serve as the basis for seeking additional bond financing from the Legislature. N.J.S.A. 18A:7G-5m(3).

As you know, the State, through your agencies, has a constitutional obligation to commence and complete construction of needed major capital, capital maintenance and emergent repair projects in a timely manner, as mandated by the rulings in Abbott v. Burke and through implementation of EFCFA. Given that the State has exhausted current bonding authority -- and is unable to commence any new major capital and capital maintenance projects -- the statutorily required planning process outlined above must move forward as quickly as possible.

Given that the LRFP element of the process is nearly final, we expect the needs assessment and priority ranking to be completed promptly, leading to the presentation of a proposed new capital plan by the SDA to SDA districts for input no later than September 30, 2016.

Once again we reiterate our offer to work collaboratively with you to accomplish these tasks within the timeframe set forth above. Thank you for your prompt attention to this matter.

Sincerely,



David Sciarra, Esq.
Executive Director

cc: Donna Arons, DAG
Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pro Bono Counsel
SDA District Superintendents