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August 26, 2020

The Honorable Phil Murphy, Governor of New Jersey

The Honorable Stephen Sweeney, President, New Jersey Senate

The Honorable Craig Coughlin, Speaker, New Jersey Assembly

The Honorable Gurbir Grewal, Attorney General of New Jersey

Re: Essential Resources for Remote Learning

Dear Governor Murphy, Senate President Sweeney, Assembly Speaker Coughlin, and Attorney General Grewal:

Education Law Center (ELC) advocates to ensure all New Jersey public school children a thorough and efficient education, as guaranteed under our State Constitution. For the last forty years, ELC has also represented the plaintiff class of students in poorer urban districts in the Abbott v. Burke litigation to fully effectuate their right to a constitutional education.

We write to bring to your immediate attention the State's obligation to take prompt action to provide a thorough and efficient education to the estimated 230,000 New Jersey students who do not have access to internet connectivity, computer devices, software or other resources essential to receive instruction through remote, digital means necessitated by the COVID-19 pandemic.

As is plainly evident, the unprecedented closing of New Jersey's school buildings in March to stop the spread of coronavirus has laid bare pre-existing deficits in access to technology among students, especially students in racially isolated, high poverty communities. Prior to the pandemic and the issuance of Executive Order 104 (March 18, 2020), the lack of students' access to high-speed internet and home computers, while an impediment to their opportunity to obtain a constitutionally adequate public education, was not a bar to accessing education altogether. After March 18, these technology deficits - commonly

referred to as the "digital divide" - became an insurmountable barrier, as remote learning replaced in-person instruction and virtually all teaching moved online. For students without broadband and/or a proper device, despite the efforts of districts and teachers, learning has been relegated to the receipt of photocopied packets with no direct instruction, delays in feedback, an absence of new material, and in some cases, no actual education of students at all.

Unfortunately, the New Jersey Department of Education (NJDOE) has yet to publicly release disaggregated data or other information on the location, scope and causes of the digital divide among students. This includes district and school level data on the numbers of students unable to receive instruction online and the specific resource deficits impeding remote learning, such as no internet access, computer devices, or other supports needed to effectively deliver education to students at home. The NJDOE has also provided no information on the extent to which communities and neighborhoods are not properly serviced by internet provider companies and/or the impact of the current consumer cost-structure for such services on students' inability to have reliable, sufficient and stable internet access in their homes.

However, available information strongly suggests the digital divide disproportionately impacts Black and Latinx students and students in high poverty neighborhoods. See July 30, 2020 letter from NAACP Legal Defense Fund to Internet Providers available at <https://www.naacpldf.org/wp-content/uploads/2020-08-06-LDF-Letter-to-Internet-Providers.pdf>. This disproportionate impact on students of color and students in lower-income communities is also highlighted in recent reports on New Jersey's digital divide. See, e.g., Politico, "New Jersey's 'Digital Divide' Widens as School Districts Prepare for Online Learning," Aug. 7, 2020 (noting that Paterson School District's June 2 order for 13,000 Chromebooks remains unfilled).

The COVID-19 public health crisis has made remote learning through online instruction a primary means by which New Jersey students will be educated in the coming months and beyond, whether they remain home full-time or are able to return to school on a part-time basis. Simply put, the technology for remote learning - sufficient, reliable internet connectivity, computer devices, software and other supports - are no longer supplementary to the delivery of a thorough and efficient education. Rather, these technology resources are now an essential element of education, and the State is constitutionally obligated to make certain the requisite tools are provided to all students.

In June 2020 guidance to districts on school reopening, the NJDOE acknowledges the reality of technology-based remote learning as a central mode by which students will be educated in the foreseeable future. The NJDOE also recognizes that "every student" must have "access to a [computer] device and internet connectivity." NJDOE, "The Road Back: Restart and Recovery Plan for Education," p.75, available at <https://www.nj.gov/education/reopening/NJDOETheRoadBack.pdf>.

("Road Back"). Further, the NJDOE, on July 24, made clear that students must be afforded "the same quality and scope of instruction" through remote means and directed districts to "ensure that every student participating in remote learning has access to the requisite educational technology." NJDOE, "Clarifying Expectations Regarding Fulltime Remote Learning Options for Families in 2020-21," July 24, 2020, p. 2, available at

<https://nj.gov/education/reopening/updates/docs/7.24.20%20RtR%20Fulltime%20Remote%20Update.pdf>. See also Abbott v. Burke, 153 N.J. 480, 514-15 (1998) (requiring technology resources and a full-time school technology coordinator to enable urban students to master the State's curriculum standards); Abbott v. Burke, 199 N.J. 140 (2009) (upholding SFRA funding formula, which includes the cost of technology and related staff, as providing adequate resources to enable all students to achieve State standards).

While recognizing remote learning is essential to educate students in the pandemic, the NJDOE thus far has done little more than call on districts to "strive" to make "best efforts" in providing technology for remote learning instruction "to students who are otherwise without access." Road Back, p. 75. The Department also recognizes the "technology divide" among students but then only advises "any district that faces a device or connectivity shortage" to address "how the district plans to provide devices and/or connectivity to students that need them" in their school reopening plans. Road Back, p.75. Finally, while districts have received federal emergency funds for expenditures related to COVID-19 impacts, the NJDOE has provided no data or information to evaluate whether the one-time federal funds are sufficient for districts to significantly reduce or eliminate the digital divide for all students.

There can be no doubt that the State's obligation to provide "a thorough and efficient system of free public schools for the instruction of all the children" is "absolute." Abbott v. Burke, 119 N.J. 287, 306 (1990). Nor can there be any doubt that the State "cannot shirk its constitutional obligation under the guise of

local autonomy." Abbott v. Burke, 149 N.J. at 145, 182 (1997). The NJDOE cannot merely issue directives to districts to plan to provide computer devices and internet connectivity to students who need them but then leave it to districts to attempt to do so without necessary resources, critical supports and adequate funding. Nor can the NJDOE leave it to the ability of families to afford computers or pay for private internet service when this technology is essential for students to have access to education altogether.

Given the unprecedented reality confronting our public schools - and to meet its constitutional obligation - the State must immediately implement a comprehensive, resource-driven plan to end the digital divide for every student and in every district where it exists. First, as an immediate step, the NJDOE must publish a comprehensive database identifying the precise numbers of students in need of a computer device and/or internet connectivity in every district and school. If updated regularly, this database can serve as a platform for the State to marshal and allocate necessary resources among districts and to pinpoint locations across the state where the digital divide disproportionately impacts Black and Latinx students and other at-risk student groups.

Second, the State, through the NJDOE, must put in place a program of cooperative purchasing of computer devices from appropriate vendors for all districts in need of those devices. At present, districts are competing against each other for contracts to procure devices, leading to shortages, delays and an unacceptable "free-for-all" among districts that impairs the orderly purchase, delivery and targeting of those devices where the need is greatest.

Third, the NJDOE, in collaboration with the Board of Public Utilities, must require all internet companies operating with a state license to promptly submit a plan to provide all students with internet connectivity at no cost to those in need. The companies must propose "bulk rate" services to be purchased by the State at substantially reduced cost, along with plans to establish "internet hot-spots" in high need neighborhoods where students can access instruction online in a safe environment.

Finally, the NJDOE must evaluate district needs for software, professional development for teachers, and other supports required for stable and continuous remote learning for students. With this information, the NJDOE can work with higher education, vendors and

other service providers to target the delivery of training and other supports where needed across districts and schools.

These steps, at a minimum, are required for the State to fulfill the unequivocal constitutional mandate to provide a thorough and efficient education to all students. They will also ensure the education of our students is not contingent on circumstances outside their control. These circumstances include whether families can afford to pay for internet service, or reside in a building or neighborhood wired for such service, or are in a district in a queue with other districts awaiting delivery of computer devices from manufacturers outside of the United States. Nor can the education of these students be wholly dependent upon a district's "best efforts" to follow-through on a "plan" filed with the NJDOE. In the pandemic, remote learning has become a central feature of our public education system, and the resources to connect all students to that system are now essential to effectuate their right to a free public education as guaranteed under the New Jersey Constitution.

We request your immediate response to the urgent issues raised above, and we stand ready to work with you to bring to an end the digital divide in our state once and for all.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Sciarra".

David G. Sciarra, Esq.  
Executive Director

Via Electronic Mail

Cc: Kevin Dehmer, Interim Commissioner of Education  
Matthew Platkin, Governor's Counsel  
George Helmy, Governor's Chief of Staff