

EDUCATION LAW CENTER
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Attorneys for Plaintiffs-Movants

RAYMOND ARTHUR ABBOTT, ET AL.,
Plaintiffs-Movants

Vs.

FRED G. BURKE, ET AL.,
Defendants-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170
CIVIL ACTION

CERTIFICATION OF DAVID SCIARRA

David Sciarra, of full age, hereby certifies as follows:

1. I am Executive Director of Education Law Center (ELC) and I am counsel to Plaintiffs in this matter. Plaintiffs are a certified class comprised of all children attending public schools in the thirty-one poorer urban districts or "SDA" districts" designated in this litigation for remedial measures, including

school facilities improvements, to address a profound and longstanding violation of their constitutional right to a thorough and efficient education.

2. I make this certification in support of Plaintiffs' Motion in Aid of Litigants' Rights under R. 1:10-3 seeking an appropriate order from this Court to address the urgent need for school construction funding in SDA districts. As set forth below, I will inform the Court of Plaintiffs' extensive efforts over the past several years to secure voluntary compliance by the Defendant Commissioner of Education (Commissioner), together with Department of Education (DOE) and the Schools Development Authority (SDA) (collectively State), with this Court's constitutional mandate to provide funding for approved, priority school facilities projects in SDA districts.

3. In Abbott v. Burke, 196 N.J. 451 (2008), this Court denied, without prejudice, a similar Motion in Aid of Litigants' Rights to secure additional school construction funding, based on the State's representation that "[t]he Governor intends to seek passage of legislation that would raise the bond limitation for school facilities in the [SDA] districts by a minimum of \$2.5 billion..." Following entry of the Court's order, the Legislature enacted such legislation in 2008, raising the bond limitation for school construction funding by \$2.9 billion. P.L. 2008, c. 30, codified in N.J.S.A. 18A:7G-14(a).

4. In support of the within motion, Plaintiffs provide this Court with a detailed record on the State's implementation of the school construction program in SDA districts since the last legislative appropriation of school construction funds in 2008. See Certification of Theresa Luhm, ¶¶12-51.

4. As early as 2015, based on information from the DOE and SDA, Plaintiffs became concerned that the increase in school construction funding approved by the Legislature in 2008 would be insufficient to support all of the projects designated as priorities in the 2011 statewide strategic plan, the most recent plan adopted by SDA and DOE pursuant to the requirement in the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-5m(3) (EFCFA). Luhm Certification at ¶15.

5. In 2015, on behalf of Plaintiffs, I began communicating with the State, through their counsel at the Office of the Attorney General, concerning implementing the requirement in EFCFA for a five-year revision to the 2011 statewide strategic plan for capital construction to serve a basis for the State to seek and secure additional school construction funding from the Legislature.

6. On October 29, 2015, I sent a letter to then Attorney General John Hoffman informing the Attorney General of the need for additional school construction funding. A true and correct copy is attached as Exhibit A.

7. By letter dated November 16, 2015, I was informed by

Deputy Attorney General (DAG) Donna Arons that her Office was "actively reviewing the concerns that you have raised." A true and correct copy is attached as Exhibit B.

8. By letter dated March 9, 2016, I was further informed by DAG Arons that the State had sufficient funds for capital projects in SDA districts for "the next five to seven years," or until 2021 to 2024, and for emergent projects for "the next two years," or until 2018. A true and correct copy is attached as Exhibit C.

9. On March 30, 2016, I wrote to DAG Arons to reiterate Plaintiffs' concerns over the insufficiency of current levels of school construction funding, noting that existing funds were already committed to projects on the 2011 statewide strategic plan and that the State lacked funding for more than half the priority projects on that plan. I also raised concern funds were lacking for any of the over 300 projects subsequently identified and approved by the Commissioner in the 2016 amendments to the SDA districts' Long-Range Facilities Plans, as required by EFCFA. A true and correct copy is attached as Exhibit D.

10. On September 6, 2017, I sent a follow up letter to DAG Arons requesting prompt action to prioritize and secure funding for approved priority facilities projects. I also stated Plaintiffs' intention to seek this Court's intervention to secure remedial relief in the event such action was not forthcoming. A true and correct copy is attached as Exhibit E.

11. By letter dated October 4, 2017, DAG Arons described the State's current portfolio for school construction and informed Plaintiffs for the first time that, in May 2016, the State had completed an updated educational facilities needs assessment and project prioritization that "will serve as a starting point for the next update to the NJSDA capital plan." A true and correct copy is attached as Exhibit F.

12. On July 25, 2018, I wrote to DAG Arons seeking an update on the development of the statewide strategic plan by the DOE and SDA, emphasizing that no new priority projects had been added to the SDA's portfolio of active projects since September 2014 and that the CEO of the SDA had testified to the Legislature in May 2018 that his agency had no funds to add such projects to the current portfolio. I again made clear Plaintiffs' intention to pursue appropriate legal action in the event of continued inaction by the State. A true and correct copy is attached as Exhibit G.

13. On November 13, 2018, I again wrote to the Attorney General to advise the incoming Governor's Administration of Plaintiffs' prior unsuccessful efforts to secure the State's voluntary commitment to plan for, and secure, a new round of school construction funding from the Legislature. I reiterated Plaintiffs' intention to return to this Court "[i]f compliance is not forthcoming in a prompt manner." A true and correct copy is attached as Exhibit H.

14. By letter dated January 2, 2019, I was notified by DAG Arons that the DOE and SDA were in the process of revising the statewide strategic plan and working with the Governor's office to develop a funding proposal for the Legislature. A true and correct copy is attached as Exhibit I.

15. On January 15, 2019, I responded to DAG Arons by letter, noting Plaintiffs' encouragement that the State was working on revising the statewide strategic plan and a legislative proposal for additional funding to support the revised plan. I expressed concern, however, over the failure to provide a timeline and requested a 60-day deadline to complete the revised plan and funding proposal. A true and correct copy is attached as Exhibit J.

16. On June 10, 2019, I wrote to DAG Jennifer Hoff once again raising Plaintiffs' concern over the State's continuing failure to complete the revised statewide strategic plan and take appropriate action to seek and secure funding from the Legislature for the plan. I again made clear that, if such steps were not promptly taken, and no funding was secured in the FY2020 State Budget cycle, Plaintiffs would have no alternative but to seek this Court's intervention to ensure State compliance. A true and correct copy is attached as Exhibit K.

17. The FY2020 State Budget was finalized with no new appropriation of funding for school construction. Shortly thereafter, by letter dated July 19, 2019, DAG Hoff advised

Plaintiffs that "the SDA is currently working on updating its statewide strategic plan and continues to work with the Governor's Office to develop a proposal for future funding of the school construction program." DAG Hoff did not indicate when a revised statewide strategic plan would be completed and when the State would commence efforts to seek and secure additional construction funding from the Legislature. A true and correct copy is attached as Exhibit L.

18. In addition to the communications and notifications described above, I and/or ELC staff personally met over the past two years with a wide range of State officials seeking, without success, prompt action to address the need for additional funding for school facilities projects to comply with this Court's school facilities mandates. Since DAG Hoff's July 19, 2019 letter, State officials have been unwilling to discuss the matter further with me or ELC staff.

15. Prior to filing this motion, Plaintiffs' counsel has made every effort over an extended period of time to obtain the State's voluntary cooperation and commitment to take necessary action to seek and secure additional school construction funding for approved, priority projects in SDA districts. Plaintiffs, therefore, move in aid of litigants' rights for this Court's intervention as a last resort to obtain State compliance with the Abbott school facilities mandates. Without judicial relief,

thousands of Plaintiff school children in poorer urban districts will remain consigned to unsafe, overcrowded and educationally inadequate facilities, in violation of their right to a thorough and efficient education, as effectuated by the facilities remedial measures ordered in this litigation.

I hereby certify that the statements made by me are true. I am aware that if any of the foregoing is willfully false, I am subject to punishment.

Dated: November 7, 2019

David G. Sciarra



October 29, 2015

John Hoffman, Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Funding

Dear Attorney General Hoffman:

Education Law Center (ELC) is writing to bring to your attention the immediate need for the Commissioner of Education (Commissioner) and the Chief Executive Officer (CEO) of the Schools Development Authority (SDA) to seek additional school construction bonding authority from the Legislature. Without such authority, the State cannot meet its constitutional obligation to commence and complete construction of needed major capital, capital maintenance and emergent repair projects for poorer urban or "SDA districts" in a timely manner, as mandated by the rulings in Abbott v. Burke.

Many school facilities in the SDA districts remain in an extremely deplorable, even dangerous condition. As a consequence, thousands of children in these districts continue to attend school in facilities that are unsafe, overcrowded and educationally inadequate, the very conditions that the New Jersey Supreme Court found to violate the Education Clause of the New Jersey Constitution nearly 20 years ago. Abbott v. Burke, 149 N.J. 145, 186-87 (1997) ("Abbott IV") ; Abbott v. Burke, 153 N.J. 480, 519 (1998) ("Abbott V"). Given the Supreme Court's clear and unambiguous mandate that the State remediate these conditions to ensure a constitutional "thorough and efficient" education to children in those districts – a mandate effectuated by the Legislature in the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 et seq. (EFCFA) -- it is incumbent upon the State to seek Legislative authorization for additional funding to advance urgently needed school construction projects within a reasonable time frame.

The Status of the SDA District School Construction Program

It is now clear that the SDA is without funding to complete more than half of the major capital projects the agency itself identified in 2011 as "highest priority," let alone any of the additional major capital projects more recently identified by the SDA districts. In January 2010, Governor Chris Christie directed the SDA to halt further activity on all pending projects in which actual building construction had not commenced, until such time as the agency could "review" the capital plan. For over a year, no new construction projects were moved into the

predevelopment phase. The review was finalized in March 2011, when the SDA issued a strategic plan with a list of 110 major capital projects in the SDA districts “comprising the highest priority needs of the state...”

Over the last four years, the SDA has allocated funding to complete 40 of those projects. However, a Funding Summary document issued by the SDA on December 1, 2014 shows that it has spent or committed nearly all available funding, leaving it without the necessary resources to undertake any of the additional priority projects that remain in the 2011 strategic plan. The SDA districts also recently identified hundreds of additional projects—all of which the DOE and SDA are legally required to rank and prioritize—in their amended Long-Range Facilities Plans.

Further, it has been four years since the DOE last surveyed districts about needed emergent projects, which 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 In 2011, only 76 out of the 716 potential emergent projects identified by the districts were advanced under the SDA program, and the \$100 million allocated for funding has been committed or expended, leaving no resources to identify or address additional projects.

Thus, the State has depleted all available funds to undertake priority major capital projects beyond the 40 projects in the construction pipeline, and for capital maintenance and emergent repairs to existing school facilities. As a result, there is urgent and pressing need to replenish the funding for school construction projects of all types in the SDA districts.

Legal Mandates

The State is required to fully fund and ensure adequate school facilities for all students as a critical component of its responsibility to ensure students in SDA districts a constitutional “thorough and efficient” education under the Education Clause. Specifically, the Court found that “adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education].” Abbott v. Burke, 149 N.J. 145, 186 (1997) (“Abbott IV”). The Court has reaffirmed that “[t]he State’s constitutional obligation under the thorough and efficient clause, N.J. Const. Art. VIII, §4, includes the provision of adequate school facilities.” Abbott v. Burke, 153 N.J. 480, 519-20 (1998) (“Abbott V”). Moreover, the Court has explicitly directed the State to fund “the complete cost” of “remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts,” as well as “the construction of any new classrooms needed to correct capacity deficiencies.” Id. at 524.

In Abbott V, the Court recognized that prompt construction and completion of needed capital projects is a central element of the constitutional mandate to provide adequate facilities. Thus, the Court explicitly expected “good faith” implementation of “facilities improvement.” Id. at 525. More specifically, the Court required the State to “promptly initiate effective managerial responsibility over school construction.” Id. at 527. The Court’s mandates could not be clearer: timely construction and completion of needed school facilities is a fundamental component of the State’s constitutional obligation to provide adequate facilities to students in SDA districts.

In implementing the Court's decrees, the Legislature delegated the responsibility to the DOE and SDA to take appropriate steps in a timely fashion to provide safe, secure and educationally adequate facilities for students in SDA districts. In light of these constitutional and statutory obligations, the DOE and SDA must act in a timely fashion to ensure the construction and completion of approved school facilities in the SDA districts. The State's failure to commence construction on numerous approved capital projects, and to complete those projects in a timely fashion, is a violation of the State's constitutional responsibilities under the Abbott rulings, as implemented by the Legislature in the EFCFA.

Action Needed and Next Steps

The students, teachers and staff who are consigned to learn and work in substandard, inadequate and even dangerous school facilities cannot wait any longer for the State to undertake construction and complete priority major capital projects, capital maintenance and emergent repairs in existing school buildings. It is essential, therefore, that the State provide specific and firm assurances that it will seek additional bonding authority from the Legislature during the FY 2017 budget cycle to ensure that construction will commence, and projects will be completed, in a prompt and timely manner.

On behalf of the students in SDA districts -- members of the Plaintiff class in the Abbott v. Burke litigation -- we are ready to work with you in a collaborative fashion to accomplish this task expeditiously. Accordingly, we will contact you in the next few days to schedule a meeting in early November to discuss how the State intends to fulfill its constitutional and statutory responsibilities, as set forth above. We are anxious to secure appropriate assurances and plans for action to resolve this matter as quickly as possible. Of course, if such action is not forthcoming, we will have no alternative but to seek appropriate judicial relief.

Thank you for your prompt attention to this matter.

Sincerely,



David Sciarra, Esq.
Executive Director

cc: David Hespe, Commissioner, New Jersey Department of Education

Charles McKenna, Chief Executive Officer, New Jersey Schools Development Authority

Senate President Stephen Sweeney

Assembly Speaker Vincent Prieto

Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pro Bono Counsel



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

JOHN J. HOFFMAN
Acting Attorney General

MICHELLE L. MILLER
Acting Director

November 16, 2015

David Sciarra, Esq.
Executive Director
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102

Re: School Construction Funding

Dear Mr. Sciarra:

I am writing in response to your letter of October 29, 2015 addressed to Attorney General John Hoffman. In your letter, you request that the Schools Development Authority seek additional school construction bonding authority from the Legislature.

The Attorney General appreciates your efforts in bringing this issue to his attention. We are actively reviewing the concerns that you have raised.

Thank you for your attention to this matter.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Donna Arons, Section Chief
Education and Higher Education Section

/jes

Cc: John J. Hoffman, Acting Attorney General
Michelle L. Miller, Acting Director, Division of Law
Charles McKenna, Chief Executive Officer, NJ Schools Development Authority
David Hespe, Commissioner, NJ Department of Education





State of New Jersey

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JOHN J. HOFFMAN
Acting Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

MICHELLE L. MILLER
Acting Director

March 9, 2016

David Sciarra, Esq.
Executive Director
Education Law Center
60 Park Place
Suite 300
Newark, New Jersey 07102

Re: School Construction Funding

Dear Mr. Sciarra:

I am writing to follow up on my previous response to your October 29, 2015 letter to Attorney General John J. Hoffman regarding school construction funding.

The Attorney General has carefully reviewed the issues raised in your letter and consulted with Charles McKenna, Chief Executive Officer of the NJ Schools Development Authority (SDA). Please be advised that the SDA currently has sufficient funds to finance approved capital projects for the next five to seven years. The agency also has sufficient resources to meet anticipated "emergent" project needs for the next two years. Thus, there is no immediate need to request additional bonding authority from the Legislature.

The State, and particularly the SDA, nevertheless are well aware of the importance of preparing for school construction needs beyond the two and seven year windows described above. To that end, Mr. McKenna and the SDA are embarking on a planning process to identify and prioritize additional school construction projects, both emergent and capital. Once that process is completed, the SDA will be able to more accurately forecast the anticipated funding requirements associated with this future construction. Feel free to contact Mr. McKenna if you wish additional information or seek to provide input.




March 9, 2016
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Thank you for your attention to this matter.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Donna Arons
Deputy Attorney General

/jes

c: John Hoffman, Acting Attorney General
David Hespe, Commissioner, New Jersey Department of Education
Charles McKenna, Chief Executive Officer, New Jersey Schools
Development Authority
Senate President Stephen Sweeney
Assembly Speaker Vincent Prieto
Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pro Bono Counsel



March 30, 2016

Donna Arons, Deputy Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Funding

Dear Deputy Attorney General Arons:

Thank you for your March 9, 2016 letter regarding the status of the school construction program. I am writing to reiterate ELC's concerns about the lack of sufficient funding to move additional projects forward, and also the need for the Schools Development Authority (SDA) and Department of Education (DOE) to move expeditiously to identify and prioritize new capital and emergent projects in the 31 SDA districts.

The acknowledgement in your letter that the SDA has adequate funding to finance already "approved capital projects" confirms that the agency has exhausted current bonding authority and lacks the funds to undertake any additional projects beyond those in the SDA's existing capital plan. As a result, SDA has no funding to undertake and complete more than half of the major capital projects the agency itself identified in 2011 as "highest priority," let alone any of the 300+ additional major capital projects identified by the SDA districts in their recently approved Long-Range Facilities Plan (LRFP) amendments.

Your letter also states that the SDA has sufficient resources to meet anticipated emergent project needs for the next two years, without providing any basis for this conclusion. We are unaware of any comprehensive review of emergent project needs by SDA and DOE since the 2011 Potential Emergent Projects (PEP) program. At that time, only 76 out of the 716 potential emergent projects identified by the SDA districts were advanced under the PEP program, and the \$100 million allocated for funding has been committed or expended, leaving no resources to identify or address additional projects.

We are also unaware of any affirmative effort by SDA and DOE to notify the SDA districts – in a manner similar to the 2011 PEP program – that funding has been set aside for emergent projects and that they should promptly identify such projects to SDA and DOE for expedited consideration. In this regard, no doubt you are aware of our request to SDA and DOE on March 28, 2016 that the agencies immediately launch a comprehensive PEP program to address and remediate elevated lead levels in the water supply systems in the State-operated Newark Public Schools.

Your letter further indicates that the "SDA has begun a planning process to identify and prioritize additional school construction projects." While we appreciate this representation, any such process must be undertaken expeditiously and in accordance with

the requirements set forth in the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 et seq. Specifically, EFCFA requires the following:

- DOE must first develop an educational facilities needs assessment for the SDA districts. N.J.S.A. 18A:7G- 5m(1);
- DOE must then establish, in consultation with each SDA district, an educational priority ranking of all school facilities projects based upon the Commissioner's determination of critical need. N.J.S.A. 18A:7G-5m(2); and
- SDA must establish, in consultation with the Commissioner, a statewide strategic plan in consultation with the SDA districts and the governing bodies of those districts' municipalities, to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues which impact the development authority's ability to complete the projects. N.J.S.A. 18A:7G-5m(3).

It is our understanding that almost all SDA district LRFPs have been approved by DOE. As a result, we anticipate that the DOE and SDA can complete the needs assessments and priority rankings, and establish a new statewide strategic capital plan, within the next three months.

As you know, these agencies have 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 EFCFA. Given that the State has exhausted current bonding authority and is unable to commence any new major capital and capital maintenance projects, this process must move forward as quickly as possible.

Once again we reiterate our offer to work collaboratively with your clients to accomplish these tasks. Thank you for your prompt attention to this matter.

Sincerely,



David G. Sciarra, Esq.
Executive Director

cc: David Hesper, Commissioner of Education
Charles McKenna, CEO, Schools Development Authority
Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pro Bono Counsel



September 6, 2017

Donna Arons, Deputy Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Prioritization Process

Dear Deputy Attorney General Arons:

I am writing to follow-up on letters we exchanged over a year ago regarding Education Law Center's (ELC) concerns about the lack of sufficient funding in the State school construction program to support needed facilities projects. As a first step in identifying the amount of additional bonding authority needed to move projects forward, the Schools Development Authority (SDA) and Department of Education (DOE) must act immediately to identify and prioritize new capital projects in the 31 SDA districts.

In a letter dated March 9, 2016, you indicated that the SDA had begun this planning process to enable it to "more accurately forecast the anticipated funding requirements associated with this future construction." Seventeen months later, we have no information that a strategic prioritization plan has been completed and made public.

There is simply no reason for this delay. It is my understanding that all of the SDA districts most recent Long-Range Facilities Plan amendments were approved months ago by DOE. As a next step in the project prioritization process, the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 et seq requires the following:

- DOE must first develop an educational facilities needs assessment for the SDA districts. N.J.S.A. 18A:7G-5m(1);
- DOE must then establish, in consultation with each SDA district, an educational priority ranking of all school facilities projects based upon the Commissioner's determination of critical need. N.J.S.A. 18A:7G-5m(2); and
- SDA must establish, in consultation with the Commissioner, a statewide strategic plan in consultation with the SDA districts and the governing bodies of those districts' municipalities, to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues which impact the development authority's ability to complete the projects. N.J.S.A. 18A:7G-5m(3).

As you know, these agencies have a constitutional obligation to commence and complete construction of needed major capital and emergent repair projects in a timely manner, as mandated by the rulings in Abbott v. Burke and EFCFA. Given that the State has exhausted current bonding authority, it is imperative that DOE and SDA undertake this strategic prioritization process as quickly as possible.

ELC serves as counsel to the school children in the SDA districts in the Abbott litigation. On their behalf, we are ready to assist your office and the respective agencies to undertake and complete these mandated steps to secure additional funding for urgently needed projects. However, given the urgency of this matter – and the extensive delays -- if an appropriate response is not forthcoming within the next 15 days, we will have no alternative but to seek judicial relief to enforce the constitutional rights of our clients.

Thank you for your prompt attention to this matter.

Sincerely,



David G. Sciarra, Esq.
Executive Director

Cc: Michelle Miller, Acting Director, Division of Law
Charles McKenna, CEO, Schools Development Authority
Kimberly Harrington, Commissioner, Department of Education
Senate President Stephen Sweeney
Assembly Speaker Vincent Prieto
Chairs, Assembly and Senate Education Committees



CHRIS CHRISTIE
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25 MARKET STREET
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CHRISTOPHER S. PORRINO
Attorney General

MICHELLE L. MILLER
Acting Director

October 4, 2017

David G. Sciarra, Esq.
Education Law Center
60 Park Place
Suite 300
Newark, New Jersey 07102

Re: Abbott v. Burke: School Construction Prioritization Process

Dear Mr. Sciarra:

I am in receipt of your letter dated September 6, 2017. You inquire as to the status of the prioritization process for new capital projects in the 31 SDA districts.

According to the NJSDA, it has, consistent with statutory requirements, advanced projects in the SDA-Districts based upon the educational priority ranking established by NJDOE and a review of logistical criteria that impact the NJSDA's ability to advance and complete projects, including efficient construction and cost factors. This process has resulted in the development - as well as the periodic review and revision - of the NJSDA's Capital Program Portfolio.

Beginning with the NJSDA Board-approved Capital Plan in March 2011, and continuing with subsequent Board-approved revisions in March 2012, January 2014 and September 2014 that added projects, the current Capital Program encompasses 39 major capital projects in 26 districts valued at approximately \$2.6 billion, with project delivery dates occurring from 2014 through 2022.

The NJSDA's portfolio of work is detailed below:



October 4, 2017

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Capital Plan Portfolio approved March 2, 2011

District	Projects Name	Project Type	Status
Bridgeton	Buckshutem ES	Addition / Renovation	Complete
Bridgeton	Quarter Mile Lane ES	Addition / Renovation	Complete
Elizabeth	Frank J. Cicarell Academy	New High School	Complete
Jersey City	Patricia M. Noonan ES	New Elementary School	Complete
Jersey City	Public School #20	New Elementary School	Complete
Long Branch	George L. Catrambone ES	New Elementary School	Complete
New Brunswick	Redshaw ES	New Elementary School	Complete
Newark	Oliver St. ES	New Elementary School	Complete
Paterson	Dr. Hani Awadallah ES	New Elementary School	Complete
Paterson	Public School #16	New Elementary School	Complete
West New York	Harry L. Bain PS 6	Renovation	Complete
11 Projects			

Capital Plan Portfolio - Amendment approved March 7, 2012 (amended again September 3, 2014 to include Passaic Leonard Place ES)

District	Projects Name	Project Type	Status
Camden	Camden High School	New High School	Site Preparation
Elizabeth	New ES @ Halloran Site	New Elementary School	Complete
Garfield	James Madison ES	New Elementary School	Construction
Gloucester City	Elementary / Middle School	New School	Complete
Harrison	New ES	New Elementary School	Design-Build Design Phase
Hoboken	Demarest ES	Renovation	Pre-Design
Keansburg	Caruso ES	New Elementary School	Complete
Keansburg	Port Monmouth Road ECC	Addition / Renovation	Design
Millville	Senior High School	Addition / Renovation	Design-Build Design Phase
New Brunswick	Robeson ES	Addition / Renovation	Construction
Newark	Elliot Street ES	New Elementary School	Complete
Newark	South Street ES	New Elementary School	Construction
City of Orange	Cleveland ES	Addition / Renovation	Design
City of Orange	Orange High School	Addition / Renovation	Design
Passaic	Dayton Ave. Pre-K to Eight Campus	New Educational Campus (4 Schools)	Design-Build Procurement
Passaic	Leonard Place ES	New Elementary School	Construction
Paterson	Middle School @ Union Ave	New Middle School	Site Preparation
Perth Amboy	Seaman Avenue ES	New Elementary School	Design-Build Design Phase
Perth Amboy	Perth Amboy High School	New High School	In House Design
Phillipsburg	Phillipsburg High School	New High School	Complete
Trenton	Central High School	New High School	Construction

October 4, 2017

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District	Projects Name	Project Type	Status
Union City	Grade 7 to 9 School	New School	In House Design
West New York	Memorial HS	Building Acquisition	Complete
23 Projects			

Capital Plan Portfolio – Amendment approved January 2, 2014

District	Projects Name	Project Type	Status
East Orange	George Washington Carver	New Elementary School	Design-Build Design Phase
Irvinton	Madison Avenue ES	New Elementary School	Construction
Pemberton	Denbo / Crichton ES	New Elementary School	Site Preparation
Plainfield	Woodland ES Replacement	New Elementary School	In House Design
Vineland	Lincoln Ave. MS	New Middle School	Construction
5 Projects			

Finally, the statute requires the NJSDA to update its plan at least once every five years. With the two most recent plan amendments in 2014, the NJSDA remains compliant with statutory requirements.

Meanwhile, as you are aware, on May 13, 2016, the DOE released its Educational Facilities Needs Assessment and Prioritization of School Facilities Projects for SDA Districts that will serve as a starting point for the next update to the NJSDA capital plan.

If you have any further questions or require additional information, please feel free to contact me.

Sincerely yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By:



Donna Arons
Deputy Attorney General

/kf

c: Michelle Miller, Acting Director, Division of Law
Charles McKenna, CEO, Schools Development Authority
Kimberley Harrington, Commissioner, Department of Education

ELC EDUCATION
LAW CENTER

July 25, 2018

Donna Arons, Deputy Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Prioritization Process

Dear Deputy Attorney General Arons:

As you are aware, Education Law Center (ELC) serves as counsel to the school children in the SDA districts in the Abbott litigation. I am writing to follow-up on letters we exchanged several months ago regarding the status of the State school construction program. I am specifically seeking an update on the development of a statewide strategic capital plan.¹

In your letter of October 4, 2017, you indicated that the Educational Facilities Needs Assessment and Prioritization of School Facilities Projects, completed by the Department of Education in May 2016, would "serve as a starting point for the next update to the New Jersey Schools Development Authority (SDA) capital plan." To ELC's knowledge, and as stated in your letter, the SDA's capital plan has not been updated since September 2014, nearly four years ago.

I remind you that this is an urgent matter. The strategic plan is essential to guide lawmakers in determining how much new bond financing should be authorized, and SDA Director Charles McKenna's testimony before the Senate budget committee in May 2018 confirmed that the SDA has no funds left to add additional projects to the current portfolio. Given that the most recent Educational Facilities Needs Assessment identifying critically-needed projects was completed over two years ago, there is no reason for further delay.

The State has a constitutional obligation to commence and complete construction of needed major capital and emergent repair projects in a timely manner, as ordered in

¹The Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 et seq requires the SDA to establish, in consultation with the Commissioner and SDA districts, a statewide strategic plan to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues which impact the development authority's ability to complete the projects. N.J.S.A. 18A:7G-5m(3).

in Abbott v. Burke and mandated by the EFCFA. In light of the State's exhaustion of current bonding authority, it is imperative that DOE and SDA undertake this strategic prioritization process as quickly as possible to remedy the current constitutional and statutory deficiency.

On behalf of the Abbott school children, we are ready to assist the Attorney General and the respective agencies to undertake and complete these mandated steps to secure additional funding for urgently needed projects. While we hope to work collaboratively with the new administration in implementing the Abbott facilities mandate, if a new capital plan is not forthcoming soon, you can expect that we will take legal action to enforce our clients' constitutional rights to attend school in buildings that are safe, not overcrowded and educationally adequate.

Thank you for your prompt attention to this matter.

Sincerely,



David G. Sciarra, Esq.
Executive Director

cc: Michelle Miller, Assistant Attorney General

ELC EDUCATION
LAW CENTER

November 13, 2018

Honorable Gurbir Grewal
Attorney General of New Jersey
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Facilities

Dear Attorney General Grewal:

Education Law Center ("ELC") is counsel to the certified class of plaintiff school children in New Jersey's thirty-one poorer urban districts in the Abbott v. Burke litigation. On behalf of our clients, I write to bring to your attention unsuccessful efforts over the last two years to secure a commitment by the State defendants ("State") to update the statewide strategic plan for facilities financing and construction in the Abbott districts - now denominated "Schools Development Authority ("SDA") districts - as required by the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1 et seq., and the Abbott mandates.

In Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V") and Abbott v. Burke, 164 N.J. 84 (2000) ("Abbott VII"), the Supreme Court ordered State implementation of a program to fully finance improvement and replacement of unsafe, overcrowded and inadequate school facilities in SDA districts. To comply, the Legislature enacted EFCFA, thereby establishing the SDA and authorizing the agency to finance and construct projects in SDA districts' Long Range Facilities Plans ("LRFPs") approved by the Department of Education ("DOE").

Since 2015, ELC has repeatedly notified your Office that the SDA has committed all available construction funds and, consequently, is unable to start and complete any of the 381 facilities projects, including 200 major school renovations and 102 new school buildings, identified in the most recent LRFPs approved by DOE. In testimony before the Senate Budget Committee in May 2018, former SDA CEO Charles McKenna confirmed that the agency has no funds to undertake any new projects

identified in the DOE-approved LRFPs and will completely spend down all previously allocated funds in four to five years.

Further, we have also requested your Office take steps to ensure that the State, through the SDA, promptly prepare and update its "statewide strategic plan" designating priority projects for financing and construction based on the SDA districts' LRFPs and the DOE needs assessment of critical educational space deficiencies, as required by N.J.S.A. 18A:7G-5m(3).¹ In addition, we are requesting the State, as ordered by Abbott v. Burke, 185 N.J. 612 (2005) ("Abbott XIV"), supply cost estimates for the priority projects included in the statewide strategic plan. These cost estimates were not included in the SDA's 2018 annual report to the Legislature, N.J.S.A. 18A:7G-24, as mandated in Abbott XIV.

The Supreme Court has made clear that the State must regularly update its statewide strategic plan of priority projects and provide cost estimates for such projects to ensure the Abbott parties "have the requisite information to assess the progress of school facilities construction and the need for further appropriations." Abbott XIV, 185 N.J. at 615. Such information is essential for the State to fulfill its constitutional and statutory obligation for "effective managerial responsibility over school construction" in the SDA districts and to ensure that the Abbott school construction program advances in a "predicable and uniform manner." Abbott XIV, 185 N.J. at 615.

I am attaching our most recent request concerning this matter, dated July 25, 2018, for your review. ELC has had no response from your Office to date.

The State has an ongoing constitutional obligation to commence and complete construction of needed school facilities projects in SDA districts in a consistent and timely manner, as mandated by Abbott and the EFCFA. Given the urgent need for additional construction funding, it is imperative that the State

¹ EFCFA requires the statewide strategic plan be updated "no less than once every five years." N.J.S.A. 18A:7G-5m(3). The plan was last updated in 2011 based on SDA districts' 2007-08 LRFPs and a DOE needs assessment completed in 2010. The State has failed to update the strategic plan even though the DOE has approved amended LRFPs within the last three to four years and conducted a new educational needs assessment in 2016.

update the statewide strategic plan and provide cost estimates for priority projects as quickly as possible to determine the need for further appropriations.

We stand ready to assist your clients in completing the requisite steps set forth above. If compliance is not forthcoming in a prompt manner, we will have no alternative but to commence appropriate proceedings before the Supreme Court to effectuate our clients' constitutional rights to buildings that are safe, not overcrowded and educationally adequate.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Sciarra".

David G. Sciarra, Esq.
Executive Director

Cc: Michelle Miller, Assistant Attorney General
Donna Arons, Deputy Attorney General
Lamont Repollet, Commissioner of Education
Matthew Platkin, Governor's Chief Counsel



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
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GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

January 2, 2019

David Sciarra, Esq.
Executive Director
Education Law Center
60 Park Place
Suite 300
Newark, New Jersey 07102

Re: School Construction Funding

Dear Mr. Sciarra:

I am writing in response to your November 13 letter to Attorney General Gurbir Grewal regarding the school construction program.


Please be advised that it is my understanding that the SDA is in the process of updating its statewide strategic plan, and is working with the Governor's Office to develop a proposal for future funding of the school construction program. To that end, I understand that you recently met with members of the Governor's Office and engaged in a productive discussion regarding these issues.

Thank you for your attention to this matter.

Sincerely yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

BY:


Donna Arons
Deputy Attorney General

c: Michelle Miller, Director
Lamont Repollet, Commissioner of Education



Attorney General Gurbir Grewal
Matthew Platkin, Governor's Chief Counsel
Deborah Cornavaca, Deputy Chief of Staff, Governor's Office
Andrew Yosha, Schools Development Authority



January 15, 2019

Donna Arons, DAG
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Facilities

Dear Ms. Arons:

I am writing in response to your January 2, 2019 letter regarding the school construction program.

While I am encouraged to learn that the Schools Development Authority (SDA) is "in the process of updating its statewide strategic plan and working with the Governor's Office to develop a proposal for future funding," you failed to provide a timeline for when the process will be completed.

Given the urgent need for additional construction funding, it is imperative that the State update the statewide strategic plan and provide cost estimates for priority projects as quickly as possible to determine the need for further appropriations. Since the Department of Education has completed the Educational Facilities Needs Assessment of the SDA districts - and given past experience -- the process of developing the strategic plan should take no longer than 60 days.

Please advise if your client can meet this deadline.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra".

David G. Sciarra, Esq.
Executive Director

Cc: Michelle Miller, Assistant Attorney General
Lamont Repollet, Commissioner of Education
Matthew Platkin, Governor's Chief Counsel
Deborah Cornavaca, Deputy Chief of Staff, Governor's Office
Lizette Delgado Polanco, Executive Director, SDA



June 10, 2019

Jennifer Hoff, DAG
Division of Law
Assistant Section Chief – Education
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
Trenton, NJ 08625

Re: Abbott v. Burke: School Facilities Mandates

Dear Ms. Hoff:

I am writing on behalf of the Plaintiff class of school children in the Abbott v. Burke litigation in response to a January 2, 2019 letter from Deputy Attorney General Donna Arons regarding the Supreme Court's orders for school facilities improvements in that litigation.

In her January letter, Ms. Arons represented that the Schools Development Authority (SDA) was "in the process of updating its statewide strategic plan and working with the Governor's Office to develop a proposal for future funding of the school construction program." Now, sixth months later, and after several meetings with State officials in the SDA and Governor's Office, no funding plan has been proposed and none appears to be forthcoming.

On behalf of our clients, we have given State officials more than ample time and opportunity to take concrete steps to secure additional school construction funds from the Legislature. Over the last two years, we have repeatedly notified the Attorney General that the SDA has committed all available construction funds and, consequently, is unable to start any of the 381 facilities projects, including 200 major school renovations and 102 new school buildings, identified in the most recent LRFPs approved by the Commissioner of Education. In addition, two former SDA CEOs testified before legislative budget committees, in 2018 and again in 2019, that the agency has no funds to undertake any new projects and will spend down all previously allocated funds in the next few years.

Simply put, our clients cannot wait any longer. The State is under a continuing obligation under the Abbott v. Burke orders to commence and complete construction of needed school facilities projects in SDA districts in a consistent and timely manner, as mandated by those orders and the Educational Facilities Construction and Financing

Act. N.J.S.A. 18A:7G-1 et seq. Given this urgent need for additional construction funding, it is imperative that State officials immediately bring forward a request for funding for appropriate legislative action.

On behalf of the Abbott plaintiff class, we are ready to assist your clients in the effort to secure additional funding for urgently needed projects. If compliance is not forthcoming in the FY20 budget cycle, we will have no alternative but to take appropriate legal action to effectuate our clients' constitutional right to school buildings that are safe, not overcrowded and educationally adequate.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, written in a professional style.

David G. Sciarra, Esq.
Executive Director

Cc: Michelle Miller, Assistant Attorney General
Matthew Platkin, Governor's Chief Counsel
Manuel Da Silva, Interim SDA CEO
Lamont Repollet, Commissioner of Education



PHILIP D. MURPHY
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GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

July 19, 2019

David Sciarra, Esq.
Executive Director
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102

Re: School Construction Funding


Dear Mr. Sciarra:

I am writing in response to your June 10, 2019 letter regarding the school construction program. It is my understanding that the SDA is currently working on updating its statewide strategic plan and continues to work with the Governor's Office to develop a proposal for future funding of the school construction program. Please be assured that we understand and appreciate the concerns raised in your letter.

Thank you for your attention to this matter.

Sincerely yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Jennifer Hoff
Deputy Attorney General

Cc: Michelle Miller, Director, Division of Law
Dr. Lamont Repollet, Commissioner of Education



July 19, 2019

Page 2

Matthew Platkin, Governor's Chief Counsel
Debora Cornavaca, Deputy Chief of Staff, Governor's Office
Manuel DaSilva, Schools Development Authority
Andrew Yosha, Schools Development Authority