

Prepared by the New Jersey Schools Development Authority

# 2019 Statewide Strategic Plan for SDA Districts Management's Presentation to the Board

January 21, 2020



# 2019 Statewide Strategic Plan for SDA Districts

## Section 1

### SDA Capital Project Portfolio 2011 to Present

## Status of Projects

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Section 1: 2019 Statewide Strategic Plan Presentation - Status of Projects  
Prepared by the New Jersey Schools Development Authority

# Delivered Projects

District	School Name	Project Type	School Opening	New Seats	Total Project Costs (Millions)
Bridgeton	Buckshutem ES	Addition / Renovation	Sep-16	196	\$21.2
Bridgeton	Quarter Mile Lane ES	Addition / Renovation	Sep-17	513	\$35.8
Elizabeth	Frank J. Cicarell Academy HS	New School	Sep-16	1,284	\$61.1
Elizabeth	New ES @Hallowan PS #22 ES Site	New School	Sep-17	990	\$55.3
Garfield	New James Madison ES	New School	Sep-18	305	\$29.7
Gloucester City	Elementary/Middle School	New School	Sep-17	763	\$65.3
Irvington	New Madison Avenue ES	New School	Sep-19	504	\$38.6
Jersey City	Patricia M. Noonan ES	New School	Sep-17	848	\$54.0
Jersey City	Public School #20	New School	Sep-16	698	\$48.0
Keansburg	Joseph Caruso ES	New School	Sep-16	842	\$48.6
Long Branch	George L. Catrambone ES	New School	Sep-14	867	\$40.0
New Brunswick	Redshaw ES	New School	Jan-15	990	\$46.1
New Brunswick	Robeson ES	Addition / Renovation	Sep-18	424	\$48.6
Newark	Elliot Street ES	New School	Jan-16	932	\$42.8
Newark	New South Street ES	New School	Sep-18	657	\$67.7
Newark	Oliver St. ES	New School	May-16	932	\$71.0
Passaic	New ES @ Leonard Place	New School	Sep-19	698	\$55.9
Paterson	Dr. Hani Awadallah ES	New School	Sep-16	722	\$55.2
Paterson	Public School #16	New School	Sep-16	705	\$59.1
Perth Amboy	New Seaman Avenue ES	New School	Sep-19	804	\$56.4
Phillipsburg	High School	New School	Sep-16	2,172	\$120.3
Trenton	New Trenton Central HS	New School	Sep-19	2,176	\$155.4
Vineland	New MS	New School	Sep-18	624	\$49.8
West New York	Harry L. Bain PS 6	Renovation	Sep-17	N/A	\$15.3
West New York	Memorial HS	Building Acquisition	2012	968	\$16.0
				<b>20,614</b>	<b>\$1,357.2</b>

## 25 Projects Delivered 20,614 New Seats

Section 1: 2019 Statewide Strategic Plan for SDA Districts - Status of Projects  
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## Upcoming Project Deliveries (Active Projects)

District	School Name	Project Type	School Opening	New Seats	Total Project Costs (Millions)
Camden	New High School	New School	Sep-21	1,468	\$132.6
East Orange	New George Washington Carver ES	New School	Sep-20	512	\$41.2
Harrison	New Kennedy ES	New School	Sep-20	432	\$36.1
Hoboken	Demarest ES	Renovation	Sep-23	N/A	TBD
Keansburg	Port Monmouth Road School	Addition / Renovation	Sep-22	318	\$28.4
Millville	Senior High School	Addition / Renovation	PHASED	860	\$137.5
Orange	Cleveland St. ES	Addition / Renovation	Sep-21	N/A	\$33.2
Orange	High School	Addition / Renovation	Sep-21	576	\$51.9
Passaic	New Dayton Ave. Ed. Campus	New School	Sep-22	2,997	\$240.9
Paterson	New MS @ Union Ave.	New School	Sep-21	1,107	\$113.9
Pemberton	New Denbo/Crichton ES	New School	Sep-20	930	\$58.7
Perth Amboy	New High School	New School	Sep-24	3,294	\$283.8
Plainfield	New Woodland ES	New School	Sep-22	839	\$62.0
Union City	New Grade 7 to 9 School	New School	Sep-25	840	\$64.2
				<b>14,173</b>	<b>\$1,284.4</b>

14 Upcoming Projects Will Deliver 14,173 New Seats

# 2019 Statewide Strategic Plan for SDA Districts

## Section 2 Capital Project Portfolio Delivery Methods and Approach

Section 2: 2019 Statewide Strategic Plan for SDA Districts – Capital Project Portfolio Delivery Methods & Approach  
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## Delivery Methods and Approach

- **Working Groups**  
NJSDA, District and NJDOE together perform a holistic review of District facilities and collaborate to validate project need and most effective, efficient solution to address that need
- **Early Site Preparation (ESP)**  
NJSDA investigates and addresses site environmental conditions prior to advancing building construction
- **Design Studio**  
NJSDA staff develops bridging documents to ensure uniformity and consistency while providing for District-specific needs
- **Standardized Design Components and Material & Systems Standards**  
Ensure that all projects conform to requirements for educational spaces, quality and consistency
- **Design-Build Project Delivery**  
Streamlined project coordination and delivery
- **Constructability Review for Traditional Project Delivery**  
Reduces occurrence of unforeseen issues, delays and cost impact

## Results

- Advancement of Appropriate Projects and Scope to Address Educational Needs
- Projects Delivered On Time
- Projects Delivered On Budget
- Minimization of Surprise
- Reduction of Change Orders
- Job Creation

## **Results (continued)**

### New Seats

20,614 New Seats Delivered

14,173 New Seats to be Delivered

34,787 Total New Seats

### Work Addressing Concerning Conditions in Existing Facilities

Approximately 1.26 Million Square Feet Addressed



# 2019 Statewide Strategic Plan for SDA Districts

## Section 3

# Remaining SDA District Needs & Statewide Strategic Plan

Section 3: 2019 Statewide Strategic Plan for SDA Districts – Statewide Strategic Plan  
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## The formulation of a statewide strategic plan is rooted in legislation

*P.L.2007, c.137 (C.52:18A-235 et al. “(SDA) shall establish 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 including, but not limited to, the construction schedule and other appropriate factors.”*

### Statutory Principles:

- *Statewide educational priority ranking*
- *Statewide strategic plan*
- *Sequencing of projects*
- *Revision of plan at least once every five years*

## Remaining Priority Needs

The NJDOE 2019 Educational Facilities Needs Assessment (2019 EFNA) Provides the Foundation for Development of the NJSDA Strategic Plan for Advancement of Projects in SDA-Districts

NJDOE's 2019 EFNA highlights the most severe facilities deficiencies impacting program delivery within each district:

- Capacity Needs (Overcrowding)
  - Address overcrowding at all Grade Levels, including Early Childhood
- Aging Infrastructure
  - Address concerning conditions at existing facilities

NJDOE's 2019 EFNA provides the educational prioritization of school facilities projects and recognizes that recommendations of educational prioritization will be jointly considered with the NJSDA's analysis of non-educational issues influencing project advancement, such as logistical and construction considerations, for the final prioritization and recommendations

## Approach

Development of a Strategic Plan to be used in the sequencing of projects in SDA-Districts based upon:

- Educational Priorities
  - Address Overcrowding
  - Building Age and Condition
- Logistical Factors
  - Availability of Land
    - Identification and acquisition of an appropriate school site
      - The most prominent logistical factor impacting the schedule of project advancement
      - A key factor in the sequencing of projects within the Strategic Plan
  - Delivery Capacity
    - SDA Staff
    - Consultant Community
    - Construction Community

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## **Approach** *(continued)*

### 2019 EFNA

- Establishes Universe of Needs for SDA-District Advancement

### NJSDA Logistical Factors

- Identify a First Tranche for advancement
- Identify activities necessary to further sequence needs within the First Tranche

## Approach *(continued)*

# Capacity Needs in SDA-Districts

## Approach (continued)

### 2019 EFNA

- Remaining Capacity Needed in SDA-Districts

County	District	Capacity Needs	Percentage Overcrowding	Grade Levels Impacted
Union	Elizabeth	7,009	34.7%	PK - 12
Bergen	Garfield	830	19.6%	PK - 5, 9 - 12
Middlesex	New Brunswick	1,374	17.1%	PK - 8
Essex	City of Orange	504	10.4%	PK, 6 - 8
Hudson	Union City	1,127	10.1%	PK - 8
Passaic	Paterson	2,235	9.7%	PK - 5, 9 - 12
Cumberland	Bridgeton	500	9.3%	PK, 6 - 12
Passaic	Passaic City	1,155	9.0%	PK - 5, 9 - 12
Atlantic	Pleasantville	187	5.0%	PK - 5
Middlesex	Perth Amboy	522	4.7%	PK - 5
Middlesex	Plainfield	352	4.3%	PK - 5
Hudson	Jersey City	1,200	4.2%	PK - 5
Hudson	West New York	298	3.8%	PK - 5
Essex	East Orange	187	1.8%	PK
Mercer	Trenton	34	0.3%	PK - 5
<b>15 Districts</b>		<b>17,514</b>	<b>10.2%</b>	

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## Approach *(continued)*

# Capacity Needs First Tranche for Validation and Advancement



## Approach (continued)

### Sequencing - First Tranche for Advancement To Address Overcrowding

County	District	Grades Served	Project Type	New Seats	New Capacity
Bergen	Garfield	PK - 5	New School (Replacement)	706	440
Bergen	Garfield	PK - 5	New School (Replacement)	706	386
Passaic	Paterson	9 - 12	Addition/Renovation	1,176	1,000
Cumberland	Bridgeton	PK, 6 - 8	Addition/Renovation	328	300
Cumberland	Bridgeton	6 - 8	Addition/Renovation	333	300
Cumberland	Bridgeton	9 - 12	Addition/Renovation	118	100
Passaic	Passaic City	9 - 12	New School (Replacement)	3,765	738
Atlantic	Pleasantville	PK - 5	New School (Replacement)	539	205
Middlesex	Perth Amboy	PK	New School	250	250
Hudson	Jersey City	PK	New School	360	360
Hudson	West New York	PK - 8	New School	549	500
<b>11 Projects</b>				<b>8,830</b>	<b>4,579</b>

These 11 Projects were identified for a sequenced First Tranche Advancement because they address high priority needs as reported in NJDOE's 2019 EFNA and there is ready availability of land under NJSDA and/or District control.

## Approach *(continued)*

### Sequencing - First Tranche for Site Identification Identification of Appropriate Sites for Delivery of Projects to Address Remaining Capacity Needs

County	District	New Seats Needed	Project Type	New Seats	New Capacity
Union	Elizabeth	PK - 12	TBD	TBD	TBD
Middlesex	New Brunswick	PK - 8	TBD	TBD	TBD
Essex	City of Orange	PK, 6 - 8	TBD	TBD	TBD
Hudson	Union City	PK - 8	TBD	TBD	TBD
Middlesex	Plainfield	PK - 5	TBD	TBD	TBD
Essex	East Orange	PK	TBD	TBD	TBD
Mercer	Trenton	PK - 5	TBD	TBD	TBD
<b>7 Districts</b>				<b>TBD</b>	<b>TBD</b>

These 7 high priority districts as reported in NJDOE's 2019 EFNA were identified for a sequenced First Tranche Advancement in recognition of the severity of overcrowding in the districts. Upon identification of appropriate sites, projects to address overcrowding in these districts will be sequenced with other portfolio projects.

## **Approach** *(continued)*

# **Building Age & Condition Needs in SDA-Districts**

# Approach *(continued)*

## 2019 EFNA

- Aging Infrastructure – Needs Based Upon Building Age & Condition

County	District	EFNA Identified Needs (Based Upon Building Age & Condition)	County	District	EFNA Identified Needs (Based Upon Building Age & Condition)
Monmouth	Asbury Park	Barack Obama Elementary School Asbury Park High School Asbury Park Middle School	Monmouth	Long Branch	Lenna Conrow ECC Audrey Clark Elementary School
Burlington	Burlington City	Captain James Lawrence Elementary School Samuel Smith Elementary School	Cumberland	Millville	Memorial School Rieck Avenue School Bacon School
Camden	Camden City	Any Pre-1925 School Building	Essex	Newark	Any Pre-1920 School Building
Hudson	Harrison	Lincoln School Hamilton School	Burlington	Pemberton	Harker-Wylie Elementary School Emmons Elementary School Stackhouse School
Hudson	Hoboken	Joseph Brandt School Junior/Senior High School	Warren	Phillipsburg	Phillipsburg Middle School
Essex	Irvington	Grove Street or other Pre-1920 School Chancellor Avenue School Berkeley Terrace School	Salem	Salem City	Salem Middle School Salem City High School John Fenwick Elementary School
Monmouth	Keansburg	Bolger Middle School	Cumberland	Vineland	Anthony Rossi School Landis Middle School Johnstone School

## Approach *(continued)*

# Building Age & Condition Needs First Tranche for Validation and Advancement

## Approach *(continued)*

### Sequencing - First Tranche for Advancement To Address Serious Facilities Deficiencies Through Delivery of Replacement Facilities

County	District	Grades Served	Project Type	New Seats
Camden	Camden City	PK - 8	New School (Replacement)	704
Camden	Camden City	PK - 8	New School (Replacement)	704
Essex	Newark	PK - 8	New School (Replacement)	932
Essex	Newark	PK - 8	New School (Replacement)	932
Salem	Salem City	PK - 8	New School (Replacement)	961
<b>5 Projects</b>				<b>4,233</b>

These 5 Projects address high priority needs as reported in NJDOE's 2019 EFNA and were identified for a First Tranche Advancement because there is ready availability of land under NJSDA and/or District control.

The 2019 EFNA notes that District and NJSDA input is needed.

Prior to advancement, a District/NJDOE/NJSDA Working Group would validate project need and appropriate solution.

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# Summary

## Portfolio - First Tranche for Advancement

Capacity Generating Facilities				
Sequencing Based on Availability of School Site				
County	District	Grades Served	New Seats	New Capacity
Bergen	Garfield	PK - 5	1,412	826
Passaic	Paterson	9 - 12	1,176	1,000
Cumberland	Bridgeton	PK, 6 - 8, 9 - 12	779	700
Passaic	Passaic City	9 - 12	3,765	738
Atlantic	Pleasantville	PK - 5	539	205
Middlesex	Perth Amboy	PK	250	250
Hudson	Jersey City	PK	360	360
Hudson	West New York	PK - 8	549	500
<b>8 Districts</b>			<b>8,830</b>	<b>4,579</b>

Replacement Facilities				
Sequencing Based on Availability of School Site				
County	District	Grades Served	New Seats	
Camden	Camden City	PK - 8	1,408	
Essex	Newark	PK - 8	1,864	
Salem	Salem City	PK - 8	961	
<b>3 Districts</b>			<b>4,233</b>	

### Sequencing to Follow Identification of Appropriate School Site

County	District	Grades Served	New Seats	New Capacity
Union	Elizabeth	PK - 12	TBD	TBD
Middlesex	New Brunswick	PK - 8	TBD	TBD
Essex	City of Orange	PK, 6 - 8	TBD	TBD
Hudson	Union City	PK - 8	TBD	TBD
Middlesex	Plainfield	PK - 5	TBD	TBD
Essex	East Orange	PK	TBD	TBD
Mercer	Trenton	PK - 5	TBD	TBD
<b>7 Districts</b>			<b>TBD</b>	<b>TBD</b>

## Additional Activities

Activities Necessary to Finalize the Sequencing of Projects Included in the First Tranche, Toward Addressing the Entirety of 2019 EFNA Educational Priorities

- Potential Site Availability Review
  - Site Identification through acquisition, relocation of current residents/businesses, demolition and remediation is a prominent logistical factor in advancement of needed projects
  - The NJSDA has leveraged the majority of existing NJSDA owned sites to advance the current Capital Project Portfolio
  - Review Municipal-Owned and District-Owned Sites in Districts with EFNA-Identified Overcrowding
- Upon identification of appropriate school sites, the sequencing for advancement of projects in the NJSDA Strategic Plan can be updated to address the high priority capacity needs in the following districts:

County	District	County	District	County	District
Union	Elizabeth	Hudson	Union City	Mercer	Trenton
Middlesex	New Brunswick	Middlesex	Plainfield		
Essex	City of Orange	Essex	East Orange		

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## **Additional Activities (Continued)**

- Initiate Building Condition Assessment Surveys across all SDA Districts
  - In order to most accurately define and prioritize work to address concerning conditions at existing facilities
  - Approximately 470 Educational Buildings in service throughout the 31 SDA-Districts
  - Surveys will assess every condition and major system through a uniform, consistent approach and will estimate remaining useful life
  - Data will allow NJSDA to proactively and efficiently plan programs of work to address the needs identified by the inspections



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September 18, 2020

The Honorable Phil Murphy, Governor

The Honorable Steve Sweeney, Senate President

The Honorable Craig Coughlin, Assembly Speaker

Re: Emergency School Facilities Funding

Dear Governor Murphy, Senator Sweeney and Speaker Coughlin:

As you know, Education Law Center (ELC) advocates for the legal rights of New Jersey's public school children to a thorough and efficient education under state law, particularly for students at risk from family and/or community poverty, students with disabilities, and students of color. Over four decades, ELC has served as the legal representative of the plaintiff urban school children in the Abbott v. Burke litigation.

In response to the unprecedented crisis created by the pandemic, we write seeking support from the Administration and the Legislature to utilize a portion of the bond financing authorized under the "COVID-19 Emergency Bond Act" (Act) to ensure school buildings across New Jersey meet the health and safety standards for reopening established by the Department of Education (DOE). Not only is bond funding for this purpose clearly authorized and appropriate under the Act, the State has a constitutional obligation to ensure students return to in-person instruction in school buildings that are safe and do not pose a threat to their health and well-being.

#### Health and Safety Requirements for Reopening Schools

The DOE's guidelines for reopening the state's public schools in the pandemic, delineated in the "Checklist for Re-Opening of School 2020-2021" and detailed in "The Road Back: Restart and Recovery Plan for Education" (Road Back), establish minimum standards districts must meet in order to allow students to return to school. With regard to facilities, districts must reconfigure classrooms to a social distancing requirement of 113 square feet per occupant, and their facilities must have adequate ventilation.

The DOE's reopening directives, however, fail to address the on-the-ground conditions in many school buildings before the pandemic, specifically the State's own recent assessments by the DOE and the NJ Schools Development Authority (SDA) documenting

severe overcrowding and unsafe building conditions in many of the high poverty, racially segregated urban, or SDA, districts.

According to DOE school facilities standards, an 800-square-foot classroom can accommodate between 21 and 24 students depending on grade level. Under the Road Back's 113-square-foot per student standard for social distancing, that same 800-square-foot classroom must be reduced to 7-8 students, or to one-third of the total.

Reducing class size by 14-16 students to achieve social distancing will be problematic in buildings with reasonable class sizes pre-COVID-19. Yet, to date the DOE has failed to acknowledge that meeting this standard in already overcrowded school buildings may well be insurmountable. If an 800-square-foot classroom typically holds 30-35 students or more, the district will need to reduce class size by over 20 students to meet the DOE social distancing standard.

This is not a problem confined to a few school buildings. The DOE's own data show that classroom overcrowding is a systemic deficit in many SDA district school buildings. In a January 2019 facilities needs assessment, the DOE analyzed critical space deficiencies and found that 15 SDA districts lacked adequate space in their existing buildings to meet facilities efficiency standards (FES) requirements pre-pandemic.

In addition to space restrictions, the DOE's Road Back requires schools to "ensure that their indoor facilities have adequate ventilation, including operational heating, and ventilation systems where appropriate." Given budget and funding constraints, it will no doubt be a challenge for many districts to perform the continuous maintenance required to ensure ventilation and heating and cooling systems are working properly. More concerning, however, is the stark reality that in the SDA districts, facilities infrastructure includes over seven million square feet of space in buildings over 91 years old and most likely in need of upgrades and repairs.

We know from DOE data that many SDA district buildings have serious ventilation deficiencies. In 2016, the DOE and the SDA surveyed these districts about health and safety projects that may qualify for state school construction funding. In response, 23 of the 31 SDA districts submitted 429 project applications to address significant unsafe, unhealthy and dangerous conditions: leaky roofs, crumbling facades, and fire safety and other basic systems. Seventy-five of those applications involved inadequate heating and ventilation systems, but only two of the four projects chosen for State funding addressed those problems. Since then, the DOE has provided no information on whether districts were able to complete the dozens of additional ventilation projects with other available funds.

### The Constitutional Requirement

Under New Jersey's constitutional mandate for a thorough and efficient system of public education, the State is obligated to ensure students attend school in buildings that are safe and do not pose a threat to their health and well-being. Specifically, the Supreme 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 response to the Supreme Court’s 1998 facilities order, the State created a school construction program that has repaired, renovated or replaced many dilapidated and outmoded school buildings in urban communities across the State. Through a companion grant program, the State has also contributed to financing hundreds of facilities improvement projects in Regular Operating Districts (ROD) in suburban, coastal, rural and high need districts statewide. However, despite well documented needs that remain unmet, the program has essentially run out of money, and no additional projects can move forward.

In November, ELC, on behalf of the students in SDA districts, asked the Supreme Court to intervene to compel additional state funding for the construction program. Although the Court dismissed the motion, it did so “without prejudice,” declining to proceed on the assumption that [State] “respondents will fail to comply with their constitutional obligations to provide a thorough and efficient educational system pursuant to [the New Jersey State Constitution].” The Court recognized that any determination of State non-compliance must be made in the “context of Fiscal Year 2021 Budget,” which, although delayed, will conclude on September 30.

### The Emergency Bond Act

On July 16, the Emergency Bond Act became law, authorizing the state to borrow up to \$9.9 billion “to respond to the fiscal exigencies caused by the COVID-19 Pandemic and to maintain and preserve the fiscal integrity of the State.” P.L. 2020, c. 60 § 2(II). Under the Act, the state has the authority to issue bonds totaling \$2.7 billion for the remainder of the extended Fiscal Year 2020, which runs through September 30, 2020, and up to an additional \$7.2 billion for the nine-month Fiscal Year 2021 that runs from October 1, 2020, through June 30, 2021.

Although the Act was challenged as unconstitutional in New Jersey Republican State Committee v. Philip D. Murphy, the Supreme Court issued a ruling on August 12 affirming the Administration’s borrowing authority. In a unanimous opinion, the Court concluded that the ongoing health crisis represents the type of major emergency that allows for bonds to be sold without voter sign-off under an exception to restrictions on borrowing and spending in the state Constitution. (A-82-19) (084731).

The Court’s decision does make clear that the Administration will need to define, in formal certifications, the budget deficit created by the health crisis before issuing any debt, and that “not every act of borrowing would ‘meet’ the current emergency.” However, some of the qualifying examples listed in the opinion include “public services like **education**, police, fire, first aid, child welfare, and prisons, among other services” that would “secure the continued functioning of government.” (Emphasis added.) Thus, funds for school

construction to address COVID-19-related issues, such as ventilation and social distancing requirements so that students and teachers can return safely to school, clearly fall within the ambit of the State's borrowing authority under the Act. And, because education is a fundamental constitutional right, COVID-19-related facilities issues in public schools can be addressed wherever the need is shown.

#### Need for Immediate Action

Given the State's constitutional obligation to provide safe and healthy school facilities and the DOE's reopening requirements, the Administration and the Legislature must take immediate action to ensure that New Jersey public schools have the funding necessary to meet the health and safety standards for reopening during the current emergency health crisis. This action is also urgently needed given that the pandemic has a disproportionate impact on vulnerable student populations, including students with disabilities, English language learners, and homeless students who face educational deprivation due to the digital divide.

Accordingly, we seek two specific actions. First, the DOE and the SDA must undertake a "COVID-19" facilities assessment to determine the need for building repairs, upgrades, or capital maintenance in order to safely reopen under the DOE guidelines for classroom occupancy, ventilation, heating and cooling and other relevant conditions. And second, the Legislature must authorize a minimum of \$500 million in bond financing under the Act dedicated solely to emergency COVID-related health and safety construction projects.

Providing needed school construction funding through the COVID-19 Bond Act gives the State an opportunity not only to meet its constitutional obligation, but to address the dire economic circumstances created by the pandemic by putting thousands of New Jersey construction workers, as well as architects, engineers and building suppliers, quickly back to work. The funding of "shovel ready" projects can serve as an important catalyst to jumpstart the statewide economy when the pandemic subsides.

Sincerely,



David G. Sciarra, Esq.  
Executive Director

Via Electronic Mail

Cc: Gurbir S. Grewal, Attorney General of New Jersey  
Matt Platkin, Governor's Counsel  
George Helmy, Governor's Chief of Staff  
Laura Console, Governor's Education Policy Advisor  
Deborah Cornavaca, Deputy Chief of Staff of Outreach



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*Via Electronic Mail*

October 20, 2020

The Honorable Phil Murphy, Governor

The Honorable Steve Sweeney, Senate President

The Honorable Craig Coughlin, Assembly Speaker

Re: Abbott v. Burke: School Construction Funding

Dear Governor Murphy, Senate President Sweeney and Speaker Coughlin:

Education Law Center (ELC) represents the Plaintiff class of school children in the poorer urban, SDA districts in the Abbott v. Burke litigation. We write regarding the status of the State Defendants' (State) compliance with the Supreme Court's orders for funding of needed construction projects in school buildings serving our clients.

Several years ago, the Schools Development Authority (SDA) publicly announced the agency had allocated all available school construction funding to projects in its existing capital plan, which had not been updated since 2014. As a consequence, the SDA has had no funds to undertake any additional projects necessary to remediate unsafe, overcrowded and inadequate conditions in SDA district school buildings, as documented in the districts' amended Long Range Facilities Plans (LRFP) and the Department of Education's (DOE) required facilities needs assessment.

In response to the State's repeated failures from 2015 through 2019 to take steps to replenish the SDA's depleted school construction fund, the Abbott v. Burke Plaintiffs filed a motion in November 2019 seeking the Supreme Court's intervention and appropriate relief. In response to that motion, the DOE and the SDA, in January 2020, released their updated statewide strategic capital plan prioritizing 24 preschool, elementary and high school projects in 18 SDA districts, including Salem, Paterson, Bridgeton and Newark.

Given the State's action, the Supreme Court, on April 1, denied Plaintiffs' request for an order that the State seek and secure additional school construction funding to undertake and complete the projects in the 2020 capital plan. The Court made clear, however, that Plaintiffs' request was "premature" given that the Fiscal 2021 State Budget had "not been enacted" and that the Court would not "proceed on the assumption" the State would "fail to comply with their constitutional obligations" in the budgetary process. Abbott v. Burke, 241 N.J. 249 (2020).

As you know, the delayed Fiscal 2021 State Budget was enacted on September 29, 2020. Neither that Appropriations Act, nor any companion or supplementary legislation, authorized additional funding for the school construction projects in the 2020 capital plan. Thus, the State has not taken the requisite action that the Supreme Court anticipated it would take to comply with the Abbott school construction orders and to fulfill its constitutional obligation to provide safe and adequate facilities to our clients, the Plaintiff school children in Abbott v. Burke.

The State's failure is even more alarming given the urgent need for facilities improvements triggered by the COVID-19 pandemic. In this regard, on September 18, Plaintiffs requested that the Governor and Legislature utilize a portion of the funding authorized under the COVID-19 Emergency Bond Act for projects to ensure school buildings meet the health and safety standards mandated by the DOE for safe school reopening. No such action was taken in the context of the enactment of the State Budget, and Plaintiffs have received no response to their written request.

The State's ongoing failure to authorize additional school construction funding – in the face of the Supreme Court's clear expectation of executive and legislative action – leaves Plaintiffs with no alternative but to seek further relief from the Court. However, we write once again to ask that you fulfill your respective obligations under the Abbott v. Burke orders and our constitution by taking appropriate action to secure the requisite funding and thereby obviate the need for intervention and redress by the judicial branch.

As always, we remain available to discuss a resolution of this most urgent matter implicating the constitutional rights of our clients. We would appreciate the courtesy of a written response to this letter.

Sincerely,



David G. Sciarra, Esq.  
Executive Director

cc: Honorable Gurbir S. Grewal, Attorney General  
Kevin Dehmer, Interim Commissioner of Education  
Manuel Da Silva, CEO, Schools Development Authority  
SDA District Superintendents