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RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs-Movants,

v.

FRED G. BURKE, ET AL.,

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 083626

CIVIL ACTION

**BRIEF FOR [PROPOSED] *AMICI CURIAE* JERSEY CITY PUBLIC SCHOOLS AND
GARFIELD PUBLIC SCHOOLS IN SUPPORT OF PLAINTIFFS-MOVANTS**

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae Jersey City Public Schools ("Jersey City") and Garfield Public Schools ("Garfield") (collectively, the "Districts") are SDA districts.

This case is of general concern to the Districts because the Districts are former Abbott Districts with pending projects in need of funding from the SDA. As will be explained further below, both Districts have dilapidated buildings with significant health and safety issues. The funding sought to be compelled by Plaintiffs' Motion in Aid of Litigant's Rights will go directly towards a great many of these projects.

The need for funding from the SDA has been intensified in the past year due to the impact of COVID-19. New Jersey's Department of Education has issued various requirements that New Jersey's school districts must comply with in order to fully reopen, including social distancing guidelines and ventilation requirements. To date, the Districts are unable to comply with the DOE's guidelines due to their need to make repairs/improvements to their facilities. Jersey City remains completely remote and Garfield only partially reopened on March 8, 2021 with about half of their students able to report for in-person learning. The Districts desperately want to bring their students back for full-time in-person learning, but need increased funding from the SDA to make necessary repairs/improvements to their facilities.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Districts adopt the Procedural History and Statement of Facts provided by Plaintiffs on this motion. They supplement Plaintiffs' presentation with certifications explaining the unmet school construction needs in their districts, including emergent needs due to COVID-19, and the impact on students and staff if immediate relief is not granted.

A. Old, Dilapidated School Buildings

Both of the Districts have dilapidated buildings with significant health and safety issues. Of Jersey City's 49 school buildings, 16 are more than 100 years old. See Certification of Franklin Walker ("Walker Cert."), ¶ 4. These 16 buildings house over 40% of Jersey City's children. *Id.* Likewise, Garfield currently houses the majority of its 5000 students in school buildings that are extremely antiquated, including three schools that are more than 100 years old and three schools constructed in the 1920s. See Certification of Anna Sciacca ("Sciacca Cert."), ¶¶ 3-4, 15. Because of the age of the Districts' respective buildings, they are in need of significant repair.

For example, Garfield's Abraham Lincoln School was built in 1918 – just 53 years after President Lincoln's death. Sciacca Cert., ¶ 5. Unsurprisingly, the building has severe structural deficiencies, including water damage from dangerous leaks in the mortar, and a sagging roof in need of replacement. *Id.*

Five other Garfield schools exhibit a host of serious exterior and interior issues that impede their function as learning and teaching facilities. *Id.* at ¶¶ 15-16. These schools require repairs to fix their roofs and floors; remediation to remove asbestos; and renovating the buildings' façade to prevent further leaks and water damage. *Id.* at ¶¶ 17-21; see also Sciacca Cert., Ex. A. If left untreated, the schools will only further deteriorate, requiring additional renovations and expenses. *Id.* at ¶ 20.

Jersey City has experienced nearly identical problems. Older buildings require renovations to roofs, masonry, boilers, and/or windows, all of which are necessary to maintain habitable conditions and to avoid costly secondary problems. Walker Cert., ¶ 9. An unfortunate example of this recently occurred in Jersey City's PS30 school. *Id.* at ¶ 9(b). Over 9 years Jersey City submitted requests to the NJDOE/SDA for a roof replacement project. *Id.* No relief came from the SDA, so after a recent major water leak resulted from the defective roof, Jersey City was compelled to secure funding through local means and renovate the roof. *Id.*

This was not the first time Jersey City turned to local means to secure funding for projects that the SDA had previously denied. In 2007, Jersey City sought emergent funding to renovate the A. Harry Moore School's structural issues. *Id.* at 9(a). Unfortunately, the SDA denied this project. *Id.* Following this, the school experienced severe leaking, which required several of

its classrooms to be closed. *Id.* Four years after applying to the SDA for funding, Jersey City was compelled to replace the roof with local funding. *Id.*

B. Overcrowding

In addition to outdated and decrepit facilities, the Districts face serious overcrowding issues, requiring them to resort to undesirable practices. Both districts have had to employ "trailer classrooms" at many their schools to address the overcrowding concerns. Sciacca Cert., ¶¶ 25-31; Walker Cert., ¶¶ 5-6. Over 20% of Jersey City's Pre-K students are currently taught in trailers. Walker Cert., ¶¶ 5-6. Additionally, Garfield has at least two trailers used as classrooms in six of its seven schools. Sciacca Cert., ¶¶ 26-32.

The Districts have also had to eliminate dedicated spaces for specialized subjects, such as rooms for art, music, science, and media centers, in order to make room for primary classrooms and staff offices. Sciacca Cert., ¶¶ 33-36; Walker Cert., ¶ 5(b). For example, the auditorium stage at Garfield's Washington Irving School cannot be used for student performances because it is used as office space for five teachers. Sciacca Cert., ¶ 35.

Garfield has also had to station classrooms in the basement of five of its schools. Sciacca Cert., ¶ 37. The basement of these schools offer insufficient ventilation and/or temperature controls. *Id.* at ¶ 46. This is concerning during normal

circumstances but is as an emergent need now due to COVID-19 and the New Jersey Department of Education's ("DOE") re-opening requirements. *Id.* at ¶¶ 39, 46. In addition, the building has no air conditioning which results in extreme heat conditions when the temperature is above 85 degrees. *Id.* at ¶ 5. Five other elementary schools in the district have similar health and safety issues and need significant repairs. See Sciacca Cert., Ex. A for a description and pictures of the deficiencies in each school.

C. Long-Range Facilities Plans (LRFP)

The DOE approved each of the Districts' respective Long-Range Facilities Plans ("LRFP"). Sciacca Cert., ¶ 8; Walker Cert., ¶ 6. Garfield's LRFP identified the need for approximately eight major school facilities projects to properly address outmoded buildings, serious overcrowding, and a lack of specialized spaces. Sciacca Cert., ¶ 10. The needed projects include both new construction and renovations/additions. *Id.* Jersey City's approved LRFP includes the replacement of five schools due to age and inadequacy, as well as the construction of twelve Early Childhood Centers. Walker Cert., ¶¶ 4, 6.

In June 2019, the DOE released an Educational Facilities Needs Assessment of the SDA districts analyzing enrollment trends, building capacity and square feet per student by four grade groups: Pre-K, K-5, 6-8, 9-12. Based on this analysis, Garfield was placed in the highest need category, Tier 1 (Sciacca Cert., ¶ 10), and

Jersey City was placed in the second highest need category, Tier 2 (Walker Cert., ¶ 7). Despite Garfield's Tier 1 classification, none of the projects approved in its LRFPs have moved forward in the construction process. Sciacca Cert., ¶ 11; Walker Cert., ¶ 8. Additionally, Jersey City still has a significant need for Pre-K classrooms so it can move its students out of the trailer classrooms. Walker Cert., ¶ 6.

The consignment of students to overcrowded and educationally inadequate facilities makes it exceedingly difficult for Garfield and Jersey City to provide students with the education needed to meet the New Jersey Student Learning Standards, formerly the Core Curriculum Content Standards, and impedes the districts' ability to deliver students an education comparable to that afforded their peers in more affluent districts. Sciacca Cert., ¶ 12; Walker Cert., ¶ 13.

D. COVID-19 Protocols

The inadequacy of the Districts' facilities has become more apparent during the COVID-19 pandemic. In June 2020, the DOE issued a checklist of requirements for school reopening. New Jersey Department of Education, *The Road Back* at 19, June 2020 ("The Road Back") (available at <https://nj.gov/education/reopening/NJDOETheRoadBack.pdf>). These requirements include social distancing guidelines (*id.* at pp. 19-20) and standards for adequate ventilation (*id.* at p. 19).

Garfield and Jersey City remain unable to meet these requirements. Jersey City is unable to meet the DOE's requirements has still not opened up for in-person learning. Walker Cert., ¶ 16. Complying with the DOE's requirements is impossible for Jersey City given the conditions of its facilities, available classrooms, and student population. *Id.* As for Garfield, it was only able to open up for in-person learning two (2) weeks ago on March 8, 2021. Sciacca Cert., ¶¶ 40-41. Up and until then, Garfield's students were learning completely remotely. *Id.* Only about half of Garfield's student body is able to report of in-person instruction. *Id.* at ¶ 41.

Remote classes present a significant challenge for many of the Districts' students who lack the technology and high-speed internet to effectively access instruction. Sciacca Cert., ¶ 40; Walker Cert., ¶ 20. Garfield and Jersey City do not know when they will be able to operate at full capacity. Sciacca Cert., ¶ 43; Walker Cert., ¶ 19. The Districts' overcrowding concerns (especially the trailer classrooms) makes it impossible for them to comply the DOE's social distancing guidelines. Sciacca Cert., ¶ 44; Walker Cert., ¶ 17. Additionally, the DOE requires adequate ventilation be maintained, which many of the Districts' schools currently do not provide. Sciacca Cert., ¶ 45; Walker Cert., ¶ 18.

The Districts do not have the facilities necessary to comply

with the DOE's guidelines. Sciacca Cert., ¶ 48; Walker Cert., ¶ 21. Through additional funding from the State, in the short-term, the Districts would be able to upgrade their respective school ventilation and heating systems, and also secure additional locations for in-person learning. *Id.* In the long-term, they would be able to create the additional building space that is necessary to house and properly teach their students.

II. LEGAL ARGUMENT

A. The Abbott Facilities Mandate Must Be Enforced to Ensure that Abbott Schoolchildren Receive a Thorough and Efficient Education.

As long recognized by this Court, "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*). Confronted with a record of "dilapidated, unsafe, and overcrowded facilities" in Abbott districts, *id.*, this Court, in 1998, entered an Order requiring the Commissioner of Education to:

[S]ecure funds to cover the complete cost of remediating identified life-cycle and infrastructure deficiencies in Abbott school buildings as well as the cost of providing the space necessary to house Abbott students adequately.

[*Abbott v. Burke*, 153 N.J. 480, 527 (1998) (*Abbott V*)].

As a direct result of this 1998 facilities mandate, Garfield and Jersey City have received several new schools. Despite this,

both districts still house the majority of their students in unsafe and/or overcrowded schools, and both require several major new facilities projects to address their students' needs. In fact, Garfield was identified as Tier 1 - the category with the highest facility needs (Sciacca Cert., ¶ 10) - and Jersey City was identified as Tier 2 in the Department of Education's June 2019 Educational Facility Needs Assessment (Walker Cert., ¶ 7).

The real-life implications of having unmet facility needs twenty years after entry of the *Abbott V* mandate are profound. Students attend school in trailers and in antiquated buildings, such as 20% of Jersey City's Early Childhood Education students who are taught in trailer classrooms. Walker Cert., ¶¶ 5-6. They also attend schools in severely overcrowded buildings, such as Garfield's Washington Irving School, serving 374 students in a building with a capacity to serve 262, with resulting safety and security issues. Sciacca Cert., ¶ 27.

In both districts, educators are unable to assure that their students are provided the education needed to meet constitutional standards, namely, the New Jersey Student Learning Standards, formerly the Core Curriculum Content Standards. *See Abbott IV*, 149 N.J. at 161) (describing how "substantive educational standards" "define the content of a constitutionally sufficient education"); see also Sciacca Cert., ¶ 12; Walker Cert., ¶ 13. The Districts have several schools with no specialized classrooms, such as

standing art or music rooms. Sciacca Cert., Sciacca Cert., ¶¶ 33-36; Walker Cert., ¶ 5(b). Garfield's Abraham Lincoln School has had to repurpose its auditorium for both physical education and music classes. Sciacca Cert., ¶ 35. Jersey City's schools have even had to eliminate spaces for science and media centers. Walker Cert., ¶ 5(b).

Immediate intervention is necessary here in order to safely reopen school buildings in the pandemic. It goes without saying that COVID-19 has had a tremendous impact on the educational system. However, this is felt acutely by former Abbott/SDA districts with more at-risk students. These students have less access to technology to access remote classrooms (Sciacca Cert., ¶ 40; Walker Cert., ¶ 2) and will only fall further behind in receiving the Thorough and Efficient Education they are constitutionally entitled to.

Due to their inadequate facilities, Garfield and Jersey City have been unable to reopen their schools fully for in-person learning. Sciacca Cert., ¶ 43; Walker Cert., ¶ 19. The issues the Districts have expressed for years to the SDA – overcrowding, poor ventilation, inadequate temperature control, and dilapidated buildings – has now resulted in an even greater predicament for the Districts where they are incapable of teaching their full student body in-person. Worse, they do not know when they will be able to safely reopen. *Id.*

This is a tragedy for the students that could be addressed in the short-term with funding to fix issues such as ventilation systems, and in the long-term, by renovating existing structures and creating the additional necessary buildings, as noted in the DOE's Educational Facilities Needs Assessment. Sciacca Cert., ¶ 48; Walker Cert., ¶ 21.

Garfield has described itself as "facing nothing short of an educational crisis" as their enrollments continue to grow and their buildings remain unsafe, overcrowded, and educationally inadequate. Sciacca Cert., ¶ 13. Jersey City has even been forced to make emergent facility repairs through local funding in order to reopen several of its schools. Walker Cert., ¶ 9. Neither of the Districts have received any information from the State about when, or if, their outstanding and badly needed facilities projects might advance to planning and construction.

In sum, the very concerns that gave rise to the *Abbott* facilities mandate remain extant in Garfield and Jersey City, rendering enforcement of that mandate as necessary now as ever. For these reasons, *Amici* Garfield and Jersey City Public Schools respectfully request that this Court grant Plaintiffs' Motion in Aid of Litigants' Rights and fulfill its role in ensuring that the interests of the *Abbott* schoolchildren "remain prominent, paramount, and fully protected." *Abbott V*, 153 N.J. at 528.

CONCLUSION

For the foregoing reasons and the reasons set forth in Plaintiffs' moving papers, the Districts respectfully requests that this Court grant the Districts Motion to participate in this matter as Amici and further grant Plaintiffs' Motion in Aid of Litigant's Rights.

Respectfully submitted,

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