

RAYMOND ARTHUR ABBOTT, ET AL.,  Plaintiffs-Movants,  VS.  FRED G. BURKE, ET AL.,  Defendants-Respondents.	SUPREME COURT OF NEW JERSEY Docket No. 083626  <b>CIVIL ACTION</b>
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**Brief of Proposed *Amici Curiae* Latino Action Network, New Jersey State Conference of the National Association for the Advancement of Colored People, and American Civil Liberties Union of New Jersey**

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### **INTEREST OF AMICI CURIAE**

*Amicus curiae* Latino Action Network ("LAN") is a grassroots organization composed of individuals and organizations committed to engaging in collective action at the local, state and national level in order to advance the equitable inclusion of the diverse Latino community in all aspects of American society. LAN's coalition, which is statewide, includes Latino organizations dedicated to political empowerment, the promotion of civil rights, and the elimination of disparities in the areas of education, health, and employment. Since its founding in 2009, LAN has also been the leading voice for the full count of Latinos in New Jersey and the equitable representation of Latinos at all levels of government. In particular, LAN seeks to ensure that Latino children have access to equal educational opportunities in New Jersey including access to all programs, services, or resources. Indeed, LAN has been especially involved with issues regarding the treatment of Latino children in public education, including by serving as a Plaintiff in *Latino Action Network, et al. v. State of New Jersey, et al.*, Docket No. MER-L-1076-18, which challenges unconstitutional *de facto* segregation in the State's public school system.

*Amicus curiae* New Jersey State Conference of the National Association for the Advancement of Colored People ("NAACP NJ") works to promote political, educational, social and economic



equality, to eradicate the causes and remove the barriers of racial discrimination, and to educate the public with regard to the adverse effects of racial discrimination, even as it seeks its elimination. Through its Education Committee, the NAACP NJ seeks to ensure that all children have direct and immediate access to high quality education, and also promotes the pursuit of equity in the procurement and distribution of needed educational resources. As part of its efforts to achieve these goals, the NAACP NJ has previously participated as *amicus curiae* in *Abbott* litigation. See *Abbott v. Burke*, 206 N.J. 332 (2011); *Abbott v. Burke*, 187 N.J. 191 (2006); *Abbott v. Burke*, 170 N.J. 537 (2002); *Abbott v. Burke*, 163 N.J. 95 (2000); *Abbott v. Burke*, 119 N.J. 287 (1990). NAACP NJ is also a Plaintiff in *Latino Action Network, et al. v. State of New Jersey, et al.*, Docket No. MER-L-1076-18.

*Amicus curiae* American Civil Liberties Union of New Jersey ("ACLU-NJ") is a private, non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the New Jersey and United States Constitutions. Founded in 1960, the ACLU-NJ has tens of thousands of members or supporters throughout New Jersey. The ACLU-NJ works through the courts, the legislature, and public education to protect the civil rights of New Jerseyans. As part of its mission, the ACLU-NJ strongly supports the right of all students to obtain a thorough and efficient education, including because that education is provided

in schools that are not unconstitutionally underfunded or segregated. Accordingly, the ACLU-NJ has long been engaged in *Abbott* cases addressing New Jersey's constitutional requirement that a thorough and efficient education be provided to all students, particularly in impoverished districts. See *Abbott v. Burke*, 100 N.J. 269 (1985) (*Abbott I*); *Abbott v. Burke*, 119 N.J. 287 (1990) (*Abbott II*); *Abbott v. Burke*, 187 N.J. 191 (2006) (*Abbott XV*). Indeed, the ACLU-NJ has participated in numerous matters raising important education-related issues, see, e.g., *In re N.J.A.C. 6A:8 Standards and Assessment*, Docket No. A-0768-16T4, 2018 N.J. Super. Unpub. LEXIS 2850 (App. Div. Dec. 31, 2018) (invalidating school testing regulations); *Estate of Jeffreys v. New Jersey*, Civ. No. 95-6155 (WGB), 1996 U.S. Dist. LEXIS 21360 (D.N.J. Jan. 29, 1996) (resolving under IDEA the question whether local or state educational agency would pay for educational services provided to disabled child); *Adam X., et al. v. N.J. Dep't of Correction, et al.*, Docket No. 3:17-cv-00188-FLW-LGH, ECF No. 26 (D.N.J. Apr. 7, 2017) (complaint alleging violation of rights to appropriate education for disabled high school students incarcerated in adult prisons); as well as other matters involving the rights of students, see, e.g., *State v. Best*, 201 N.J. 100 (2010) (addressing the applicable standard where a public school principal seeks to search a student's car on school property); *Joye v. Hunterdon*, 176 N.J. 568 (2003) (raising students' state

constitutional rights against suspicionless drug testing); *L.W. ex rel. L.G. v. Toms River Reg'l Sch. Bd. of Educ.*, 381 N.J. Super. 465 (App. Div. 2005) (involving the Law Against Discrimination's application to a student's right to be protected from discrimination-based school bullying).

#### **PRELIMINARY STATEMENT**

*Amici curiae* here express their full support for Plaintiffs' motion, which seeks a ruling from the Court directing the State to secure the funding of school facilities construction mandated by this Court in *Abbott v. Burke*, 153 N.J. 480 (1998) ("*Abbott V*"), and *Abbott v. Burke*, 164 N.J. 84 (2000) ("*Abbott VII*"). In particular, *amici* seek to participate in this case in order to emphasize that the existence of sub-standard school facilities in Abbott districts – which, as is well-established in Plaintiffs' motion, are caused by the State's failure to fully fund the improvements to those facilities as mandated by this Court – has racially disparate consequences because today, as when the *Abbott* litigation first arose, students in those districts are disproportionately Black and Latino.

As the Court has observed, the "grave state of disrepair" of schools in Abbott districts "not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety." *Abbott V*, 153 N.J. at 519. And just as the Court has previously noted that Abbott school children are

overwhelming non-White, *ibid.* (noting that during the 1996-97 school year, 45% of the students in Abbott districts were Black and 37% were Latino, while only 15% were White); see also *Abbott v. Burke*, 119 N.J. 287, 392 (1990) ("*Abbott II*") ("Our large [B]lack and [Latino] population is more concentrated in poor urban areas[.]"), that reality remains true today. Thus, the State's failure to implement this Court's mandate has resulted not only in the continuation of the "severe educational deprivation" that this Court decried over thirty years ago in *Abbott II*, 119 N.J. at 395, but has had a particularly harsh impact on students of color who "face, through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand or appreciate," *ibid.*, including attending schools that are nothing like those attended by their White counterparts. See *id.* at 362-63 (describing how Abbott districts "operate schools that, due to their age and lack of maintenance, are crumbling," while "[i]n contrast most schools in the richer suburban districts are newer, cleaner, and safer" and "provide an environment conducive to learning.").

This reality has been exacerbated by the COVID-19 pandemic. Thus, the vast majority of students in Abbott districts are learning from home, which has been a "virtual nightmare," particularly for children (disproportionately children of color) who are without "high-speed internet, personal computers and

stable living situations.” Adam Clark, *The Kids Left Behind*, N.J.com (Sept. 17, 2020) (available at <https://www.nj.com/education/2020/09/the-kids-left-behind.html>).

Now, as Abbott districts plan the return of their student bodies – again, overwhelmingly compromised of students of color – to in-person schools, they are hampered by the State’s funding scheme, which has not, contrary to the Court’s prior Orders, resulted in “the provision of adequate physical facilities” in Abbott districts, *Abbott V*, 153 N.J. at 519-20; *accord Abbott II*, 119 N.J. at 362, and particularly schools with adequate ventilation and the necessary space for social distancing that is so important to school re-opening. In this way, the State yet again threatens to undermine the thorough and efficient education that this Court intended for *all* students, irrespective of their race and the wealth of their districts, to receive, *Abbott II*, 119 N.J. at 395, and which, as the Court has repeatedly made clear, requires the State to “fund the complete cost of remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts,” *Abbott V*, 153 N.J. at 524. Accordingly, *amici* respectfully submit that this Court should grant Plaintiff’s motion and direct the State to provide the funding necessary to ensure a thorough and efficient education and safe school facilities to students in the Abbott districts.

## PROCEDURAL HISTORY AND STATEMENT OF FACTS

Thirty years ago, in *Abbott II*, in order to redress the constitutionally deficient education in Abbott districts, this Court mandated that the State "assure funding of education in poorer urban districts at the level of property-rich districts," which "such funding cannot be allowed to depend on the ability of local school districts to tax," but instead "must be guaranteed and mandated by the State." *Abbott II*, 119 N.J. at 295. In *Abbott v. Burke*, 136 N.J. 444, 454 (1994) ("*Abbott III*"), this Court reemphasized that "students in [Abbott districts] have distinct and specific requirements for supplemental educational and educationally-related programs and services that are unique to those students, not required in wealthier districts, and that represent an educational cost not included within amounts expended for regular education." Then, in *Abbott v. Burke*, 149 N.J. 145 (1997) ("*Abbott IV*"), this Court, in reaffirming its prior holdings, made clear if it was not already, that "adequate physical facilities are an essential component of the constitutional mandate for a thorough and efficient education." *Abbott IV*, 149 N.J. at 186. Indeed, the Court found capital deficiencies to be among "the most significant problems" facing Abbott districts. *Ibid.* And, in *Abbott V*, the Court emphasized that "deplorable conditions have a direct and deleterious impact on the education available to the at-risk children," *Abbott V*, 153 N.J. at 519; in

order to address these “deplorable conditions,” the Court directed the State to fully fund the remediation of “the school buildings in Abbott districts” that were “crumbling and obsolescent.” *Ibid.*

In response, the State enacted the Education Facilities Construction and Financing Act and later established the Schools Development Authority (“SDA”) as the agency that is now responsible for funding facilities in Abbott districts. N.J.S.A. 18A:7G-3; see also N.J.S.A. 52:18A-237 (replacing the former Schools Construction Corporation with the SDA). The SDA is required to fund, plan, design, and construct the necessary projects in Abbott districts. See N.J.S.A. 18A:7G-5(k). As part of the planning process, the Commissioner of Education is required to create, and periodically update, an “educational facilities needs assessment”, or “EFNA,” for each district within the SDA’s purview, and then utilize the EFNA to prioritize the funding of necessary facilities projects, including projects designed to prevent “overcrowding.” N.J.S.A. 18A:7G-5(m) (1) - (2).

In the 2019 EFNA, the SDA found, after dividing districts into three grade groups (grades Pre-K through 5; grades 6 through 8; and grades 9 through 12), that fifteen Abbott districts had “capacity and square footage deficiencies” among at least one grade group; five districts had deficiencies in two or more grade groups; and one district (Elizabeth) was deficient in all three grade groups. Susan Kutner, *2019 Educational Facilities Needs Assessment*

*and Prioritization of School Facilities Projects for SDA Districts* at B:4, Office of School Facilities Planning (January 15, 2019) (“2019 EFNA”) (available at [https://edlawcenter.org/assets/files/pdfs/facilities/EFNA\\_2019\\_D\\_OE.pdf](https://edlawcenter.org/assets/files/pdfs/facilities/EFNA_2019_D_OE.pdf)). In addition, among the remaining sixteen Abbott districts without such deficiencies, the 2019 EFNA identified numerous other projects, “particularly those replacing buildings beyond their useful life for education,” to be “worthy of consideration.” *Id.* at B:5.

On January 21, 2020, the SDA approved the 2019 Statewide Strategic Plan for SDA Districts (“2019 Strategic Plan”), which identified major capital projects planned in the Abbott districts. New Jersey Schools Development Authority, *2019 Statewide Strategic Plan for SDA Districts*, (January 21, 2020) (available at [https://www.njsda.gov/NJSDA/Content/Projects/2019 Statewide Strategic Plan.pdf](https://www.njsda.gov/NJSDA/Content/Projects/2019_Statewide_Strategic_Plan.pdf)). “[T]here is ready availability of land under NJ SDA and/or District control” for sixteen of these projects. *Id.* at 17-18. However, the SDA currently lacks funding to begin construction on any of the projects identified in the 2019 Strategic Plan. See Lizette Delgado, Opening Statement at 9 (April 10, 2019) (“Delgado Statement”) (available at [https://www.njleg.state.nj.us/legislativepub/budget\\_2020/SDA\\_Delgado-Polanco\\_testimony\\_04102019.pdf](https://www.njleg.state.nj.us/legislativepub/budget_2020/SDA_Delgado-Polanco_testimony_04102019.pdf)) (Noting that as of April 2019, the SDA had “no additional funding available to commit to



new construction"); see also New Jersey Schools Development Authority, December 2020 Biannual Report ("December 2020 Report") (available at [https://www.njsda.gov/NJSDA/Content/public/Biannual\\_Report/2020\\_2.PDF](https://www.njsda.gov/NJSDA/Content/public/Biannual_Report/2020_2.PDF)). Yet despite Plaintiffs' advocacy, in the fiscal year 2021 budget the State did not seek or authorize any additional funding for priority school construction projects in the 2019 Strategic Plan or for projects to remediate health and safety conditions in Abbott-district school buildings. State of New Jersey Appropriations Handbook Fiscal Year 2021 ("FY 2021 Handbook") (available at <https://www.nj.gov/treasury/omb/publications/21approp/FY21FullAppropAct.pdf>). And in the recently announced Fiscal Year 2022 budget, Governor Murphy proposed "75 million for the SDA's Capital Maintenance and Emergent Needs Grant program," but failed to seek additional funding for the capital construction program that would provide the necessary financial support for new major capital projects. Philip D. Murphy, Budget In Brief, Fiscal Year 2022 (Feb. 23, 2021) (available at <https://www.nj.gov/treasury/omb/publications/22bib/BIB.pdf>).

This problem is not new. In 2016, the SDA and Department of Education ("DOE") undertook a Potential Emergent Projects Program ("PEPP") to identify and undertake "potential projects impacting the health and safety of students and staff." SDA, Letter

*announcing the 2016 Emergent Projects Application Process*, July 26, 2016 (available at <https://www.nj.gov/education/archive/facilities/072616SDA.pdf>).

The PEPP identified 429 building conditions in need of emergent action in Abbott districts, including leaky roofs, crumbling facades, and inadequate ventilation, heating and cooling, fire safety and other basic systems. SDA, *Emergent Projects Lists*, 2016 (“Emergent Projects Lists”) (available at

[https://edlawcenter.org/assets/files/pdfs/facilities/Potential Emergent Projects List.pdf](https://edlawcenter.org/assets/files/pdfs/facilities/Potential_Emergent_Projects_List.pdf).) But the SDA and DOE approved only 15

projects as emergent. *Id.* On at least five other occasions – December 2014, June 2018, December 2018, June 2019, and June 2020 – the SDA alerted the State in writing to the unmet facilities needs in Abbott districts, making clear that available funding for major capital projects was fully committed to projects already in the construction pipeline. See generally SDA, *Annual and Other* (available at

<https://www.njsda.gov/NJSDA/Public/AnnualAndOtherReports>). For example, on April 10, 2019, the then-Chief Executive Officer of the SDA testified before the Assembly Budget Committee on the need for construction funding, and advised that the SDA “had visited more than 125 schools in need of improvement.” Delgado Statement, *supra*, at 6. The SDA further explained “that the State of New Jersey MUST do more to help improve conditions and overcrowding in

[Abbott] districts.” *Id.* at 5 (emphasis in original). SDA officials explained that there was “NO additional funding available to commit to new construction.” *Id.* at 9 (emphasis in original). Thus, when the SDA completes the 11 projects in its current management portfolio it will have no remaining funding to undertake any of the major projects in Abbott districts. *See, e.g., ibid*; December 2020 Report, *supra*; New Jersey Schools Development Authority, June 2020 Biannual Report (“June 2020 Report”) (available at [https://www.njsda.gov/NJSDA/Content/public/Biannual\\_Report/2020\\_1.PDF](https://www.njsda.gov/NJSDA/Content/public/Biannual_Report/2020_1.PDF)).

Moreover, and significantly given the COVID-19 pandemic, the DOE has also released a checklist for school reopening which states, among other requirements, that “[s]chools and districts must ensure that their indoor facilities have adequate ventilation.” New Jersey Department of Education, *The Road Back* at 19, June 2020 (“The Road Back”) (available at <https://nj.gov/education/reopening/NJDOETheRoadBack.pdf>). The DOE further recommends that school buildings be reconfigured to allow for social distancing. *Id.* at 19-20. The need to comply with these requirements, and return students to in-person schooling, is critical, especially for the low-income, urban students served by Abbott districts. Indeed, remote instruction has presented difficulties for these students in particular, because they lack the necessary resources, like “high-speed internet [or] personal

computers," to ensure their success in a remote learning environment. Clark, *supra*. As a result, some students have resorted to not attending school at all. See Kelly Heyboer, *About 25% of Kids In This N.J. School District Are Ditching Remote Learning Every Day, Superintendent says*, N.J. com (December 3, 2020) (available at <https://www.nj.com/education/2020/12/about-25-of-kids-in-this-nj-school-district-are-ditching-remote-learning-every-day-superintendent-says.html>.) For example, in Camden, where "[a]bout 60% of its students are considered economically disadvantaged," "the attendance rate [] dropped" by more than 15% when they switched to remote instruction, and one reason for that was because they "do not have access to a laptop or internet." *Ibid*.

Meanwhile, as of January 21, 2021, 24 of the 31 Abbott districts, enrolling 90% of the 279,419 students in those districts, remain on remote instruction. Colleen O'Dea, *The Latest Plans by Your School District for Remote, In-Person or Hybrid Learning*, NJ Spotlight News (January 21, 2021) (available at <https://www.njspotlight.com/2021/01/the-latest-plans-by-your-school-district-for-remote-in-person-or-hybrid-learning/>); see Statistical Appendix.<sup>1</sup> And of those 24 districts, 16 districts have

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<sup>1</sup> As described in the Statistical Appendix attached to this Brief, the data within this brief is derived from public school enrollment data maintained by the State Department of Education. Because the data is publicly maintained, it is subject to judicial notice. See *State v. Terry*, 430 N.J. Super. 587, 595 (App. Div. 2013), *aff'd*, 218 N.J. 224 (2014) (taking judicial notice of United

not offered in-person instruction since school buildings were closed in March 2020, while seven switched to being fully remote in mid-October after partially reopening in September. See, e.g., Colleen O’Dea, *supra*; Tom Davis, *New Jersey Schools Closed For Rest of Academic Year: Gov. Murphy*, Patch (May 4, 2020) (available at <https://patch.com/new-jersey/morristown/watch-live-gov-phil-murphy-nj-coronavirus-school-reopen-5-4-20>); Evan Slavitt and Casey Roland, *More N.J. Schools are Planning to Reopen With All-Remote Learning. Here’s the Latest List.*, (August 26, 2020) (available at <https://www.nj.com/education/2020/08/more-nj-schools-are-planning-to-reopen-with-all-remote-learning-heres-the-latest-list-aug-22-2020.html>).

However, and as should have been expected by the State, hundreds of facilities in Abbott districts fail to meet the DOE’s checklist standards for reopening in light of the pandemic. See *Emergent Projects List*, *supra*. Specifically, over 90 facilities in Abbott districts have complained of inadequate ventilation systems. *Ibid*. And in the 2019 EFNA, the SDA identified 15 Abbott districts with capacity needs due to overcrowding. 2019 EFNA, *supra*, at B:4. And there are 18 priority projects identified in the 2019 Strategic Plan designed to address the capacity needs in

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States Census Bureau data pursuant to N.J.R.E. 201(b)(3)); see also *J.H. v. R & M Tagliareni, LLC*, 239 N.J. 198, 226 n.2 (2019) (Rabner, C.J., dissenting) (noting that “[c]ourts can take judicial notice of studies and statistics from suitable sources under N.J.R.E. 201(b)(3)” and citing cases).

Abbott school facilities, with another five designed to address serious facilities deficiencies. 2019 Strategic Plan, *supra*, at 15. However, and again, the SDA lacks funding to move on any of the priority projects. Delgado Statement, *supra*, at 6. Thus, without State funding, many Abbott facilities will be unable to meet applicable reopening requirements. *See ibid*; *see also* The Road Back, *supra*, at 19.

The consequences of the failure of the State to provide adequate facilities in the Abbott districts, as exacerbated by the consequences of COVID, are disproportionately visited upon Black and Latino children in New Jersey, who are starkly overrepresented in Abbott districts. This was true in the 1986-87 school year, as this Court observed in *Abbott II*: "Camden's school enrollment was 95% minority; East Orange, 99% minority; Jersey City, 85%; Trenton, 88%; Newark, 91%; Paterson, 90%; and Irvington, 94%." *Abbott II*, 119 N.J. at 342 n.19. And it remained true in 1998, when the Court decided *Abbott V*, at which point "264,070 students attended 420 schools in the [Abbott districts] . . . this enrollment included 119,066 [Black students] (45%), 98,098 [Latino students] (37%), 39,355 White [students] (15%), and 7,551 Native American and Asian or Pacific Islander [students] (3%)." *Abbott V*, 153 N.J. at 549. Nor has this situation changed in the two-and-a-half decades since: today, according to the most recent data available from the New Jersey Department of Education, the 31 Abbott districts serve

279,419 students. See Statistical Appendix, *infra*. Of those students, 26% are Black and 59% are Latino. *Ibid*. Only 10% of the students in all of the Abbott districts are White. *Ibid*. By comparison, the 640 non-Abbott districts serve nearly 1.1 million students of whom 12% are Black and 23% are Latino. *Ibid*. In those same districts, 50% of the students are White. *Ibid*.

Even more specifically, the Abbott districts in which the SDA is currently unable to undertake the required projects due to a lack of funding also reflect these racial disparities. Thus, of the 31 Abbott districts, 18 of them have priority projects that require funding from the SDA to proceed. 2019 Strategic Plan, *supra*. In those districts, 25% of the students are Black, 65% are Latino, and 6% are White. 2019-20 Enrollment Data, *supra*. In sum, there really can be no question about it: Black and Hispanic children are disproportionately impacted by the State's failure to fully fund the improvements required in Abbott school facilities.

#### **LEGAL ARGUMENT**

##### **I. THE ABBOTT REMEDIES ENSURE NECESSARY RESOURCES FOR ABBOTT DISTRICTS THAT REMAIN SEVERELY RACIALLY ISOLATED.**

In *Abbott II*, this Court compared at length the quality of education delivered in Abbott districts with the education delivered in the more affluent districts and concluded that Abbott districts consistently provided an inferior educational opportunity. 119 N.J. at 357-68. The Court held that "the level of

education offered to students in some of the poorer urban districts is tragically inadequate. Many opportunities offered to students in richer suburban districts are denied them." *Id.* at 359. The record, the Court explained, established that: poorer urban districts could not offer essential curriculum, like science or math, or secondary courses, like art, physical education, and foreign language; and, significantly here, the Abbott districts operated schools that, due to their age and lack of maintenance, were crumbling and did not provide an environment in which children could learn. *Id.* at 359-363. The Court held that "in order to achieve the constitutional standard for the student from these poorer urban districts – the ability to function in that society entered by their relatively advantaged peers – the totality of the districts' educational offering must contain elements over and above those found in the affluent suburban district." *Id.* at 374. Acknowledging that children in Abbott districts "face, through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand or appreciate," *id.* at 394, the Court expressed particular concerns about the State's failure to remedy the "severe educational deprivation" facing its poor and minority citizens who reside in urban municipalities. *Id.* at 392. The Court foresaw a future in which a "continuing constitutional failure" would serve to further isolate a "substantial segment of our population." *Id.* at 392-393. Moreover, the Court recognized that



not only the fate of the students, but also the entire "state's future," depends on ensuring that the children in Abbott districts receive an education that enables them "to compete in the marketplace," and "to assume their proper roles as citizens." *Id.*

The Court has, in particular, emphasized the need for safe and adequate facilities in the Abbott districts, specifically noting that the "grave state of disrepair" of schools in Abbott districts "not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety." *Abbott V*, 153 N.J. at 519. Thus, in *Abbott IV*, this Court specifically held that "adequate physical facilities are an essential component of the constitutional mandate for a thorough and efficient education." 149 N.J. at 186 (*citing Abbott II*, 119 N.J. at 395). The SDA – and its predecessor – was thus created in order to address the "dilapidated, unsafe, and overcrowded facilities" in the racially imbalanced Abbott districts. *Abbott IV*, 149 N.J. at 186; *see also* N.J.S.A. 52:18A-235(g)-(h) (describing establishment of SDA to oversee construction projects in Abbott districts). But, as the SDA has repeatedly pointed out, *see generally* SDA, Annual and Other ([available at https://www.njsda.gov/NJSDA/Public/AnnualAndOtherReports](https://www.njsda.gov/NJSDA/Public/AnnualAndOtherReports)), it lacks the funding to undertake projects necessary to comply with this Court's mandates in *Abbott II* and *V*, which require the State

to fully fund Abbott district facility improvements. *Abbott II*, 119 N.J. at 374; *Abbott V*, 153 N.J. at 519-20.

Accordingly, today, just as when the Court decided *Abbott V* in 1998, “[i]t is undisputed that the school buildings in Abbott districts are crumbling and obsolescent and that this grave state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety.” *Abbott V*, 153 N.J. at 519. In 2016, Abbott districts identified 429 building conditions in need of emergent action, including leaky roofs, crumbling facades, and inadequate ventilation, heating and cooling, fire safety and other basic systems. See Emergent Projects Lists, *supra*. And in 2019, the then-SDA Chief Executive Officer said the SDA had “seen schools that were between 125-150 years old,” which “should not,” she continued, “be schools . . . they should be museums.” Delgado Statement at 6, *supra*. Specifically, the SDA “visited schools where . . . windows . . . didn’t open,” causing some classrooms to reach temperatures of “80 [plus] degrees,” and some schools could not meet the State’s physical education requirement because the “gyms or the gym floors are bowed, bent and broken.” *Ibid.*; compare *Abbott V*, 153 N.J. at 519 (describing Abbott school facilities with “[w]indows, cracked and off their runners, that do not open”; “fire alarms and fire detection systems [that] fail to meet even minimum safety code standards”; “electrical connections [that] are frayed”; and some

"floors are buckled and dotted with falling plaster"). In sum, as Plaintiffs make clear, the State's failure to provide the SDA with essential funding has resulted in the very future predicted by this Court, in which urban students of color remain not only isolated from their White counterparts but also deprived of their constitutional right to a thorough and efficient education based upon the lack of adequate school facilities. *Abbott II*, 119 N.J. at 393.

**A. Black and Latino Children are Disproportionately Harmed by the State's Failure to Comply with Abbott's Mandates Regarding Funding of School Facilities.**

The disproportionate impact of the failure of the State to provide adequate facilities in the Abbott districts upon students of color is stunning. Specifically, the demographic data demonstrates that 59% of the students in Abbott districts are Latino. See Statistical Appendix, *infra*. Conversely, in non-Abbott districts, just 23% of the students are Latino. Thus, on a percentage basis, the 31 Abbott school districts have nearly three times as many Latino students as the remaining districts in New Jersey. *Ibid*. Similarly, 26% of the students in Abbott districts are Black, while only 12% of students in non-Abbott districts are Black. *Ibid*. Thus, the 31 Abbott school districts have, relatively speaking, more than twice as many Black students as the remaining districts in New Jersey. *Ibid*. On the other hand, White students

make up only 10% of the students in Abbott districts, but 50% of the students in non-Abbott districts. *Ibid.* Accordingly, this data demonstrates that Latino and Black children are overwhelming impacted by the State's failure to fully address the "dilapidated, unsafe, and overcrowded facilities" in Abbott districts, *Abbott IV*, 149 N.J. at 186.

This fact is not new. To the contrary, in the 31 years since *Abbott II*, the demography of the Abbott districts has remained essentially unchanged. When this Court decided *Abbott II* in 1990, it noted that enrollment in Abbott districts consisted overwhelmingly of "minority" students, with at least seven of the districts containing 85% or more enrollment of such minority students. *Abbott II*, 119 N.J. at 342 & n.19. And when the Court decided *Abbott V* in 1998, 85% of the students in Abbott districts were non-White. *Abbott V*, 153 N.J. at 549. Today, 90% of the students in Abbott school districts are non-White. See Statistical Appendix, *infra*. Accordingly, Black and Latino children have continuously, over the span of decades, borne the brunt of the State's failure to address the inferior school facilities in Abbott districts.

This continuing and persistent reality denies a large segment of overwhelmingly non-White students the thorough and efficient education that will provide not only "teaching the skills needed to compete in the labor market," but also to enable every student

to "fulfill one's role as a citizen, a role that encompasses . . . the ability to participate fully in society, in the life of one's community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends." *Abbott II*, 119 N.J. at 363-64. And because "deplorable conditions have a direct and deleterious impact on the education available" to Abbott district schoolchildren, and accordingly, "[t]he State's constitutional educational obligation includes the provision of adequate school facilities," *Abbott V*, 153 N.J. at 519-20, the State's inaction is significant: it means that, given the poverty and racial isolation of the State's urban areas, students of color are disproportionately affected by the State's stubborn failure to address the facilities deficiencies that have for so long been a fact of life in the Abbott districts. As the Court recognized in *Abbott II*:

The devastation of the urban poor is more significant in New Jersey than in most states both because of our demographics and the structure of our society. Our large Black and Latino population is more concentrated in poor urban areas and will remain isolated from the rest of society unless this educational deficiency in poorer urban districts is addressed.

[119 N.J. at 392.]

The result is profound: as the record shows, Black and Latino children in Abbott districts, unlike their overwhelmingly White counterparts in other districts, attend school in facilities with

“deplorable conditions,” which necessarily, as this Court has put it, has a “deleterious impact on the education available” to them. *Abbott V*, 153 N.J. at 519-20. This infringes these Black and Latino children’s constitutionally guaranteed right to a thorough and efficient education, consigning them “to remain enveloped in [an unstable] environment,” unable “to participate fully in society.” *Abbott II*, 119 N.J. at 392.

**B. Failing to Fund the SDA’s 2019 Statewide Strategic Plan Disproportionately Harms Students of Color.**

Despite the decades-long need to address the deficient Abbott school facilities, the State has again failed to seek funding to complete the priority school construction projects in the SDA’s 2019 Strategic Plan or for projects that would remediate the health and safety conditions in Abbott school buildings. Governor Murphy, Fiscal Year 2021 Budget Summary (September 2020) (available at <https://www.state.nj.us/treasury/omb/publications/21bib/BIB.pdf>). As discussed above, Black and Latino children in Abbott districts again bear the burden of the State’s failure. See Statistical Appendix, *infra*.

Unsurprisingly given the severe racial isolation of Abbott districts, 90% of the students in the 18 districts with priority projects are Latino and Black. *Ibid*. In these districts, the impact upon Latino students is particularly severe. *Ibid*. (65% of the students in the 18 districts with SDA priority projects identify

as Latino). And, there is nearly three times the percentage of Latino students in Abbott districts with priority projects than in the 640 non-Abbott districts. *Ibid.* (23% of the students in non-Abbott districts are Latino.) Further, 25% of students in districts with priority projects are Black, which is more than twice the percentage of Black students in non-Abbott districts. *Ibid.* White students, conversely, make up only 6% of the students in Abbott districts with priority projects, while they consist of 50% of students in non-Abbott districts. *Ibid.*

Of the priority projects in the 18 Abbott districts, 16 of them have land available for the commencement of construction. 2019 Strategic Plan, *supra*. Thus, the only barrier to addressing the many deficiencies that could be remedied by these 16 projects is the State's failure to seek funding for the projects to proceed. See Delgado Statement, *supra* at 9. If the State complied and secured the necessary funding, they could immediately begin to address the stark inequities to which Black and Latino children are subjected in Abbott districts as a result of their recognized sub-standard school facilities. Only with such compliance would the State be able to fulfill the mandate of the Thorough and Efficient Education Clause of our State's Constitution, N.J. Const. art. VIII, § 4, ¶ 1, to "equip all of the students of this state to perform their roles as citizens and competitors in the same society." *Abbott II*, 119 N.J. at 389 (1990). And, it follows,

without the funding of these projects, the State fails not only to comply with this Court's prior *Abbott* mandates but also to fulfill its responsibilities to the students, overwhelmingly young people of color, in those districts. See *Abbott IV*, 149 N.J. at 186 (“[A]dequate physical facilities are an essential component of the constitutional mandate for a Thorough and Efficient education.”).

**C. COVID-19 Exacerbates Educational Deficiencies for Black and Latino Children Caused by Inadequate School Facilities.**

SDA projects do not address every issue facing Abbott school districts, but funding them would substantially increase the quality of education for Latino and Black students. This reality is particularly true in light of the COVID-19 pandemic. There can be no doubt that the need for facilities capable of supporting safe in-person education is of particular importance in Abbott districts, given that 90% of children in those districts remain on remote instruction. See Colleen O’Dea, *supra*; Statistical Appendix, *infra*. Now, 24 of the 31 Abbott districts, serving more than 90% of the children in all Abbott districts are fully remote. *Id.* And given the DOE’s reopening guidelines, which require adequate ventilation and space in order to social distance, students in Abbott districts will likely remain on remote instruction for the foreseeable future, which, as is explained in



further detail below, presents its own sets of difficulties for Black and Latino children. See *The Road Back*, *supra*.

Specifically, remote learning has been a “virtual nightmare” for the minority students in New Jersey who lack “high speed internet, personal computers, and a stable living environment.” Adam Clark, *The Kids Left Behind*, *supra*. For months, the State failed to provide children with laptops; meanwhile “students in some-low-income communities were assigned worksheets filled with lessons they already learned,” and some school districts, like Paterson, “did not grade or provide feedback on students’ work, merely checking that it was completed.” *Ibid*. The State projected that “[m]ore than 350,000 kids were left without computer devices or internet access,” and those students were overwhelmingly low-income minorities. *Ibid*. This reality, however, was not shared by the more affluent districts. *Ibid*. When the pandemic first disrupted schooling in New Jersey, more affluent school districts “simply handed out computers – if they hadn’t already – and immediately started synchronous instruction.” *Ibid*. Meanwhile, students in school districts without resources used their “iPhone as an internet hotspot” and used those same phones “to complete [their] assignments.” *Ibid*. These obvious disparities in resources resulted in a situation with affluent “school district[s] actually delivering teaching at certain times of day via the internet,” while other, less resourced districts did nothing more than provide

students with packets of work that did not need to be returned. *Ibid.* Thus, the pandemic has created and exacerbated differences between districts based on funding: just as in *Abbott II*, children in low-income communities (largely Black and Latino) are not receiving a thorough and efficient education due to the lack of resources, which is a reality that is simply not shared by their (largely White suburban) counterparts. See *ibid.*; see also *Abbott II*, 119 at 363 (Abbott districts “operate schools that, due to their age and lack of maintenance, are crumbling”; in contrast “most schools in the richer suburban districts are newer, cleaner, and safer. They provide an environment conduct to learning.”); *Abbott IV*, 149 N.J. at 178 (“Unfortunately, obstacles to a Thorough and Efficient education are present not only in the schools themselves, but also in the neighborhoods and family conditions of poor urban children.”).

And, alarmingly, this situation stands to persist, and perhaps become exacerbated. That is because, of course, adequate facilities are critical to the reopening of schools that is necessary to redress this racial gap in the provision of education during the pandemic. See *The Road Back, supra*, at 19-20 (describing ventilation and social distancing requirements of reopening schools). But Abbott districts are ill-equipped to address those issues, as they have been for many years. Indeed, as the Court specifically observed in *Abbott II*, multiple Abbott facilities

suffered from “ventilation” or “air conditioning problems.” *Abbott II*, 119 N.J. at 363. That problem persisted eight years later, when this Court decided *Abbott IV* and observed that “children in Abbott districts [had to] contend with gross overcrowding,” forcing some schools to conduct “three different classes . . . simultaneously within the confines of one room,” and forcing others to use “[l]ibraries and hallways . . . as general classrooms.” *Abbott V*, 153 N.J. at 519. And even today, hundreds of facilities in Abbott districts suffer from overcrowding, as well as poor ventilation systems and lack of basic infrastructure. *Ibid.* In some Abbott schools, the overcrowding is so bad that “subjects like art and music are taught beneath stairwells.” Delgado Statement at 6, *supra*. Indeed, Abbott districts have identified hundreds of buildings with inadequate ventilation, heating and cooling, fire safety and other basic systems. See Emergent Projects Lists, *supra*. Therefore, even if children in Abbott districts (who, again, are largely Black and Latino) returned to in-person school, they would be forced to attend school buildings riddled with deficiencies – and of course, as this Court has recognized, “deficient facilities are conducive to a deficient education.” *Abbott II*, 119 N.J. at 363.

But the pandemic serves to elucidate these infrastructure and facility deficiencies in Abbott districts even more clearly; that is, these districts have been not only denied the funding necessary

to address the constitutional deficiencies that this Court identified before COVID-19, but also require these funds in order to reopen their facilities with the stricter requirements – adequate ventilation and social distancing measures – that are necessitated by the pandemic. FY 2021 Handbook, *supra*. “An important approach to lowering the concentrations of indoor pollutants or contaminants, including [COVID-19], that may be in the air, is to increase ventilation.” Kaveh Asanti, Louise Voden, and Azeem Majeed, *Healthier Schools During the COVID-19 Pandemic: Ventilation, Testing, and Vaccination*, J. Royal Soc’y Med. (February 5, 2021) (available at <https://journals.sagepub.com/doi/full/10.1177/0141076821992449>).

“Good ventilation in classrooms is crucial to dilute and filter out respiratory particles to reduce the risk of infection. This is due to the large amount of respiratory particles that are produced and concentrated in an enclosed environment by activities such as breathing, talking, singing, coughing and sneezing.” *Ibid*. Accordingly, “[i]mproving indoor air quality in classroom spaces should be followed at the same level as government advice regarding social distancing, mask wearing and hand washing to lower the risk” of COVID-19 transmission. *Ibid*. Researchers have “stressed the role of increasing ventilation rate using natural ventilation, avoiding air recirculation, avoiding staying in another person’s direct air flow, and reducing the number of people sharing the

same room," as ways to prevent the spread of COVID-19. Shyam Aggarwal, Shreya Aggarwal, and Anita Aggarwal, High Viral Load and Poor Ventilation: Cause of High Mortality From COVID-19, *Asia Pac. J. Pub. Health*, (July 25, 2020) (available at <https://journals.sagepub.com/doi/full/10.1177/1010539520944725#>)

Again, however, Abbott districts are unable to meet these requirements because they lack the funding to address facility deficiencies that specifically include ventilation issues. See Emergent Project List, *supra*; 2019 Strategic Plan, *supra*. For example, some school facilities in Abbott districts have "windows [that don't] open," Delgado Statement, *supra*, at 6. Others have ventilation systems that require "[c]omplete replacement of all mechanical components." Emergent Projects List, *supra*. Further, Abbott districts will likely be unable to "reduce the number of people sharing the same room," Aggarwal, *supra*, as recommended, because they are overcrowded, with one district, Elizabeth, enrolling over 7,000 students more than it has the space to accommodate. 2019 Strategic Plan, *supra*, at 15. In 1998, this Court observed that the "grave state of disrepair" of schools in Abbott districts "not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety," *Abbott V*, 153 N.J. at 519; more than 20 years later, the COVID-19 pandemic provides a compelling illustration of the precise threat that this Court recognized.

Although the funding of adequate school facilities cannot address every issue facing Black and Latino children in Abbott districts, “[t]he goal is to motivate them, to wipe out their disadvantages as much as a school district can, and to give them an educational opportunity that will enable them to use their innate ability.” *Abbott II*, 119 N.J. at 369. Thus, mandating the State comply with Abbott funding requirements, in order to address the myriad of facility deficiencies, serves dual purposes: it both ensures that students in Abbott districts are able to learn in safe and adequate environments, and works toward mitigating the intense social, economic, and racial isolation this Court highlighted in *Abbott II*, 119 N.J. at 392.

At that time, the Court powerfully summarized the problem:

This record proves what all suspect: that if the children of poorer districts went to school today in richer ones, educationally they would be a lot better off. Everything in this record confirms what we know: they need that advantage much more than the other children. And what everyone knows is that – as children – the only reason they do not get that advantage is that they were born in a poor district. For while we have underlined the impact of the constitutional deficiency on our state, its impact on these children is far more important. They face, through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand or appreciate.”

[119 N.J. at 394.]

Although this ringing passage makes no mention of race, it is clear that the Court's language about poverty could equally – and equally tragically – been articulated not in terms of “the children of poorer districts” but in terms of “New Jersey's children of color.” For the data, described above, shows that it is Black and Latino children who suffer most from the State's failure to provide a thorough and efficient education in Abbott districts in general, and to provide for the facilities necessary to do so in particular. This is a problem that is more striking than ever in this, the pandemic era. But because receipt of a thorough and efficient education, in every era, remains the key to achieving economic mobility and increasing the prospects for success in society, *Abbott II*, 119 N.J. at 392, today's failings will reverberate for years and even generations to come. In an effort to avoid this result, at least in part, *amici* respectfully request that this Court grant Plaintiffs' motion and direct the State to seek and secure the funding necessary to ensure the health and safety of school buildings in Abbott districts. (Plaintiffs' Brief in Support, Jan. 28, 2021 at 1). The future of New Jersey depends upon it.

#### **CONCLUSION**

For the reasons stated above, *Amici* LAN, NAACP NJ, and ACLU-NJ respectfully request that this Court grant Plaintiffs' motion and direct the State to seek and secure the funding necessary to

ensure a thorough, efficient, and safe education to the Abbott school children.

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Respectfully submitted,

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**STATISTICAL APPENDIX**

Statistical information regarding student demographics for the 2019-20 school year was readily derived from enrollment data that is publicly available on the New Jersey Department of Education website, <https://www.nj.gov/education/data/enr/enr20/>. That data is downloadable as a Microsoft Excel document containing, among other things, a "District" spreadsheet with separate rows for each of the State's public school districts, and each row contains, among other data, the racial demographics of the district's student body.

The New Jersey Department of Education's enrollment data for the 2019-20 school year shows there are currently a total of 1,375,828 children enrolled in the 671 New Jersey School districts. 279,419 students are enrolled in the 31 Abbott districts – Pleasantville, Garfield, Burlington City, Pemberton Township, Camden, Gloucester City, Bridgeton, Millville, Vineland, East Orange, Irvington, Newark, Orange, Harrison, Hoboken, Jersey City, Union City, West New York, Trenton, New Brunswick, Perth Amboy, Asbury Park, Keansburg, Long Branch, Neptune Township, Passaic City, Paterson, Salem City, Elizabeth, Plainfield, Phillipsburg<sup>2</sup>-and 1,096,409 are enrolled in the 640 non-Abbott districts. In order to ascertain the total enrollment in the 640 non-Abbott districts, counsel took the sum of all students in the 671 New Jersey school districts, subtracted the sum of all students and arrived at 1,096,409 students.

**TOTAL ENROLLMENT IN ABBOTT DISTRICTS**

Extracting the data for the 31 Abbott districts reveals the following for Abbott districts:

<b>ABBOTT DISTRICT</b>	<b>TOTAL ENROLL</b>	<b>WHITE</b>	<b>BLACK</b>	<b>HISPANIC</b>	<b>ASIAN</b>	<b>NATIVE AMERICAN</b>	<b>HAWAIIAN NATIVE</b>	<b>TWO OR MORE</b>
<b>Asbury Park City</b>	1742.5	59	891.5	786	0	0	0	6
<b>Bridgeton City</b>	6333	201	1306	4712	6	17	0	91
<b>Burlington City</b>	1732	471	914	269	43	1	0	34

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<sup>2</sup> A complete list of the 31 Abbott school districts is available at <https://web.archive.org/web/20161007222440/http://www.nj.gov/highereducation/grants/CBRFP/ABBOTTS.pdf>.

<b>ABBOTT DISTRICT</b>	<b>TOTAL ENROLL</b>	<b>WHITE</b>	<b>BLACK</b>	<b>HISPANIC</b>	<b>ASIAN</b>	<b>NATIVE AMERICAN</b>	<b>HAWAIIAN NATIVE</b>	<b>TWO OR MORE</b>
<b>Camden City</b>	6925	66	3049	3700	66	2	4	38
<b>City Of Orange Twp.</b>	5259	17	2953	2243	9	4	2	31
<b>East Orange</b>	9289.5	62	8118	1004.5	18	26	14	47
<b>Elizabeth City</b>	27769	2174	4653	20378	468	6	57	33
<b>Garfield City</b>	4933	1907.5	389.5	2541	49	3	10	33
<b>Gloucester City</b>	2212	1412	231	443	118	2	1	5
<b>Harrison Town</b>	1977	261	40	1510	152	0	1	13
<b>Hoboken City</b>	2233	993	245	829	119	6	6	35
<b>Irvington Township</b>	7212	23	5481	1626	34	12	19	17
<b>Jersey City</b>	26593	3941	6902	10247	4857	60	190	396
<b>Keansburg Boro</b>	1644	838.5	342.5	394.5	20	1.5	8	39
<b>Long Branch City</b>	5783.5	1418	828	3325	43.5	8	1	160
<b>Millville City</b>	5192	1847	1686	1340	46	14	4	255
<b>Newark City</b>	36676	2874	14659.5	18674.5	334	72	62	0
<b>New Brunswick City</b>	9245.5	77	721.5	8370	38	9	1	29
<b>Neptune Twp.</b>	3835.5	726.5	1633	1120.5	86	3	5	261.5
<b>Passaic City</b>	13590	102	539	12674	241	8	17	9
<b>Paterson City</b>	24588	1277	5178	16682	1447	0	4	0
<b>Perth Amboy City</b>	10744	115	491.5	10054.5	40	1	4	38
<b>Pemberton Twp.</b>	4576	2406	950	844	78	14	17	267
<b>Phillipsburg Town</b>	3876	2057	693	821	91	5	4	205
<b>Plainfield City</b>	8211.5	46	1887.5	6202.5	278	8	15	25.5

ABBOTT DISTRICT	TOTAL ENROLL	WHITE	BLACK	HISPANIC	ASIAN	NATIVE AMERICAN	HAWAIIAN NATIVE	TWO OR MORE
Pleasantville City	3492	55	1104	2241	49	2	19	22
Salem City	1235.5	234	808.5	168	3	5	0	17
Trenton Public School District	12652.5	114.5	4582	7845	31	7	9	64
Union City	12251	256	140	11698	154	1	1	1
Vineland City	9734	1956	1396	5922	208	31	8	204
West New York Town	7882	222	76	7442	120	0	2	20
<b>TOTAL</b>	279419	28218	72889	166107	8995.5	328.5	485	2396

**RACIAL DEMOGRAPHICS OF ABBOTT DISTRICTS**

Extracting and aggregating the data for the 31 Abbott districts reveals the following demographic data for Abbott districts:

ABBOTT DISTRICTS (ALL)	White	Black	Hispanic	Asian	Native American	Hawaiian Native	Two or More Races
<b>Total Enrollment</b>	28,218	72,889	166,107	8,995.5	328.5	485	2,396
<b>Percentages</b>	10%	26%	59%	3%	.12%	.17%	.85%

**RACIAL DEMOGRAPHICS OF ABBOTT DISTRICTS WITH PRIORITY SDA PROJECTS**

Similarly, looking at the Abbott districts with pending priority SDA projects (Garfield, Paterson, Bridgeton, Passaic City, Pleasantville, Perth Amboy, Jersey City, West New York, Elizabeth, New Brunswick, City of Orange, Union City, Plainfield, East Orange, Trenton, Camden City, Newark, and Salem City) reveals the following demographic data:

<b>ABBOTT DISTRICTS (WITH SDA PROJECTS)</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>Hawaiian Native</b>	<b>Two or More Races</b>
<b>Total Enrollment</b>	13,741	57, 558	146, 877	7,957	231	411	894
<b>Percentages</b>	6%	25%	65%	3%	.1%	.18%	.4%

**RACIAL DEMOGRAPHICS OF ABBOTT DISTRICTS ON REMOTE INSTRUCTION**

Extracting and aggregating the data for the Abbott districts that currently remain on remote instruction<sup>3</sup> – Pleasantville, Garfield, Burlington City, Pemberton Township, Camden, Gloucester City, Bridgeton, Millville, Vineland, East Orange, Irvington, Newark, Harrison, Jersey City, Union City, West New York, Trenton, New Brunswick, Perth Amboy, Passaic City, Paterson, Salem City, Elizabeth, and Plainfield – reveals the following total demographic data for those districts:

<b>ABBOTT DISTRICTS (ALL)</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>Hawaiian Native</b>	<b>Two or More Races</b>
<b>Total Enrollment</b>	22,109	65,303	156,588	8,627	301	459	1,658
<b>Percentages</b>	8%	25%	61%	3%	.11%	.17%	.6%

**RACIAL DEMOGRAPHICS OF NON-ABBOTT DISTRICTS**

Finally, extracting and aggregating the data for the 640 non-Abbott districts reveals the following total demographic data for non-Abbott districts:

<b>NON-ABBOTT DISTRICTS (ALL)</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>	<b>Hawaiian Native</b>	<b>Two or More Races</b>
<b>Total Enrollment</b>	549,841	128,129	250, 934	133,395	1,656	2,228	30,226
<b>Percentages</b>	50%	12%	23%	12%	.1%	.2%	2.7%

<sup>3</sup> Colleen O’dea, *The Latest Plans by Your School District for Remote, In-Person or Hybrid Learning*, NJ Spotlight News (January 21, 2020) (available at <https://www.njspotlight.com/2021/01/the-latest-plans-by-your-school-district-for-remote-in-person-or-hybrid-learning/>)