



Roger León  
Superintendent

# Newark Board of Education

Brenda C. Liss, Esq., General Counsel • Office of General Counsel  
Arsen Zartarian, Esq., Deputy General Counsel • [azartarian@nps.k12.nj.us](mailto:azartarian@nps.k12.nj.us)

Where Passion Meets Progress

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**VIA EMAIL and OVERNIGHT DELIVERY ([supremectbrief.mbx@njcourts.gov](mailto:supremectbrief.mbx@njcourts.gov))**

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625-0970

**Re: Raymond Arthur Abbott v. Fred G. Burke  
Docket No. 085333**

Dear Ms. Baker:

Please accept this letter in lieu of a more formal brief on behalf of the Board of Education of the City of Newark ("Board") in support of its motion for leave to appear as amicus curiae pursuant to R. 1:13-9.

## PRELIMINARY STATEMENT

The Board is responsible for oversight of the Newark School District ("District"), which is the State's largest school district. The District currently serves 37,006 students in pre-kindergarten through grade 12 in 68 school buildings, and additional students in charter schools and private schools. Many of the District's school buildings are aging facilities and many are in serious disrepair. See Certification of Steven M. Morlino dated March 22, 2021 ("Morlino Certification"), ¶¶4, 5. Some lack essential facilities such as working kitchens, elevators, gymnasiums, and classrooms suitable for use as science labs. See

Certification of Roger León dated March 22, 2021 (“León Certification”), ¶¶6, 7. Additionally, the District lacks sufficient space to serve its increasing student population. Id., ¶8. While these needs are being addressed to the extent possible with available funds in the District’s operating budget, addressing them in that manner exacerbates the otherwise significant need for those funds. Id., ¶10.

Given the scope and severity of educational facilities needs in Newark, the Board’s interest in and potential contribution to this matter are indisputable. Further, the Board’s involvement may assist the Court in resolution of the issue of profound public importance presented in this matter, and its participation will not prejudice any party. The Board therefore meets the requirements for amicus curiae status in accordance with R. 1:13-9.

**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Plaintiffs’ brief in support of their motion in aid of Litigants’ rights provides a detailed account of the procedural and factual background of the matter before the Court. In particular, Plaintiffs’ brief includes an extensive discussion of the Abbott facilities mandate, the Education Facilities Construction and Financing Act, the current state-wide need for school facilities projects and school construction funding, the impact of the coronavirus pandemic, the FY2020-21 State budget,

and Plaintiffs' efforts to secure compliance with the Abbott facilities mandate.

The most salient fact is that in April 2020 this Court anticipated the State's compliance with funding the Abbott facilities mandate "in the context of the Fiscal Year 2021 budget," Abbott v, Burke, 241 N.J. 249, 249 (2020), but the State has failed to comply. As a result, the students of Newark and those in other SDA districts continue to attend school in facilities that are unacceptably in need of repair or otherwise inadequate. In particular, Newark's school facilities conditions are dire and urgently need attention. See Morlino Certification; León Certification

Because of the Board's interest in this proceeding and its potential contribution, the Board respectfully requests leave to appear as amicus curiae pursuant to R. 1:13-9.

#### **LEGAL ARGUMENT**

##### **THE BOARD SHOULD BE GRANTED AMICUS CURIAE STATUS.**

Pursuant to R. 1:13-9(a), an application for leave to appear as amicus curiae must state "the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof." The rule further provides that the "court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the

resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby.” Id. The Board’s application satisfies all of those factors.

As set forth by Plaintiffs, the issue to be addressed in this proceeding is whether the Court’s intervention is required to ensure that the State comply with the Court’s previous directives to fund the cost of remedying inadequate school facilities conditions. Notwithstanding the Court’s stated expectation that the State would comply with its obligation to fund facilities improvements in the context of the Fiscal Year 2021 budget, see Abbott v. Burke, 241 N.J. 249, 249 (2020), the State has failed to do so. See Plaintiffs’ Brief at 1. Consequently, the relief requested by Plaintiffs is a “remedial order directing the State, by June 30, 2021, to seek and secure such funding as is required to undertake the sorely needed facilities projects. Plaintiffs’ reference for identification of the required projects, and for the scope of the facilities needs in the special needs districts overall, is the Schools Development Authority’s (SDA’s) 2019 Statewide Strategic Plan.” Id.

This Court has consistently reaffirmed the State’s obligation to ensure adequate physical facilities, as “an essential component” of the constitutional mandate for a thorough and efficient education. See, e.g., Abbott v. Burke, 119 N.J. 287, 390

(1990). It has observed that “[w]e cannot expect disadvantaged children to achieve when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them.” Abbott v. Burke, 149 N.J. 145, 187-88 (1997). Twenty-three years ago, in Abbott V, the Court directed the State to fund the cost of “remediating the infrastructure” of facilities in “deplorable conditions.” Abbott v. Burke, 153 N.J. 480, 519 (1998).

Specifically as to Newark, the Court in Abbott IV found that the District is home to a multitude of “crumbling and obsolescent schools” and “dilapidated, unsafe, and overcrowded facilities.” Abbott v. Burke, 149 N.J. 145, 186 (1997). That continues to be true. A summary and details of the District’s school facilities in need of improvement are set forth in the Morlino Certification. As discussed there, a comprehensive report of all Newark school facilities conducted in 2012, in partnership with New Jersey Institute of Technology, characterized the conditions of 25 of the District’s school facilities as “poor” or “very poor,” and measured the cost of necessary repairs at over \$200 million. See Morlino Certification, ¶8. Since then, those conditions have worsened. Id., ¶9. Thus, dozens of potential Newark school facilities projects, including two new school construction projects, are implicated in the relief presently requested by Plaintiffs.

In 2019, the Board engaged consultants to conduct a further comprehensive review of the district's facilities. The report of that review described in detail the conditions at numerous facilities in need of repair and improvement. Examples of such need included deficient HVAC or ventilation; large spaces or rooms with no heat or heat provided by boilers over a century old; inoperable or nonfunctioning elevators; significant water infiltration, leaks, drainage issues, and flooding; and windows that were sealed shut. Id., ¶¶ 10-26.

In sum, school facilities conditions in the Newark School District remain as deficient today as they were in 1997, when this Court described them as "crumbling and obsolescent," 149 N.J. at 186, and the lack of adequate space and poor condition of school facilities has impeded the Board's ability to serve its students. As stated by Newark's Superintendent of Schools:

[T]he band-aid solutions that have been applied to many of the District's poor facilities conditions are not sufficient to return Newark schools to their former glory and to enable today's students to realize their dreams and reach their full potential. They are not sufficient to provide the level of adequacy to which all students are entitled. Given the scope and extent of the need, addressing those conditions will require a major injection of funds. [León Certification, ¶10.]

Given the scope and extent of its facilities needs, the Board's interest in this matter is clear and its potential contribution to the Court's resolution of the issues is

unquestionable. Accordingly, we respectfully submit that the Board's participation as amicus curiae is wholly appropriate. Its motion for leave to appear should, therefore, be granted.

**CONCLUSION**

For the foregoing reasons, the Board respectfully requests that the Board's motion for leave to appear as amicus curiae should be granted.

Respectfully submitted,

NEWARK BOARD OF EDUCATION  
OFFICE OF GENERAL COUNSEL



By: Brenda C. Liss  
Attorney ID 033491984

c: All Counsel on Attached Service List

**SERVICE LIST**

Gurbir S. Grewal, Attorney General of New Jersey  
Office of Attorney General  
Attention: Caroline Jones, DAG, Christopher Weber, DAG, Aimee  
Rousseau, DAG and Amna T. Toor, DAG  
Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08625  
[Caroline.Jones@law.njoag.gov](mailto:Caroline.Jones@law.njoag.gov)  
[Christopher.Weber@law.njoag.gov](mailto:Christopher.Weber@law.njoag.gov)  
[Aimee.Rousseau@law.njoag.gov](mailto:Aimee.Rousseau@law.njoag.gov)  
[Amna.Toor@law.njoag.gov](mailto:Amna.Toor@law.njoag.gov)

David Sciarra, Esq.  
Education Law Center  
60 Park Place, Suite 300  
Newark, NJ 07102  
[DSciarra@edlawcenter.org](mailto:DSciarra@edlawcenter.org)

Eugene G. Liss, Esq.  
92 Main Street  
Little Falls, NJ 07424  
[lisslaw@hotmail.com](mailto:lisslaw@hotmail.com)

Lawrence S. Lustberg, Esq  
Michael R. Noveck, Esq.  
Alexander Shalom  
Jeanne LoCicero  
Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102-5310  
[LLustberg@gibbonslaw.com](mailto:LLustberg@gibbonslaw.com)  
[MNoveck@gibbonslaw.com](mailto:MNoveck@gibbonslaw.com)  
[AShalom@aclu-nj.org](mailto:AShalom@aclu-nj.org)  
[JLociero@aclu-nj.org](mailto:JLociero@aclu-nj.org)