

# JOHNSTON

— LAW FIRM LLC —

MONTCLAIR, NJ NEW YORK, NY

THOMAS O. JOHNSTON  
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Member NJ and NY Bars

December 9, 2021

**VIA MESSENGER**

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611


**Re:           Abbott v. Burke, et. al., Supreme Court Docket  
              No. 085333, Related Case No. 042170**

Dear Ms. Baker:

We are counsel to the New Jersey Public Charter Schools Association, Inc. ("NJPCSA"). Enclosed please find an original and eight (8) copies of NJCSA's notice of motion for leave to appear as *amicus curiae* in the above captioned matter, as well as a letter brief, proposed *amicus curiae* brief, certification of Thomas O. Johnston and certification of Harold Lee in support of same. We also enclose a certification of service. Please charge any fees associated with this filing to our firm's JACS Account, 144908.

Kindly stamp one copy of the motion "filed" and return it to this office in the enclosed self-addressed, stamped envelope. Thank you for your kind consideration in this regard.

Respectfully,



Thomas O. Johnston

Cc: David G. Sciarra, Esq. (via email and Fedex)  
Lauren Jensen, Esq. (via email and Fedex)

**JOHNSTON LAW FIRM LLC**

Thomas O. Johnston, Esq. (Id: 040061998)

151 Forest Street, Suite A

Montclair, NJ 07042

(Tel) 973-447-4610

Attorneys for Movant Amicus Curiae

New Jersey Public Charter School Association, Inc.

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RAYMOND ARTHUR ABBOTT, ET	:	SUPREME COURT OF NEW JERSEY
AL.,	:	DOCKET NO. 085333
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	On Certification from:
	:	Superior Court of New Jersey,
FRED G. BURKE, ET AL.,	:	Appellate Division
	:	
Defendants	:	NOTICE OF MOTION TO FILE
	:	AMICUS CURIAE BRIEF AS WITHIN
	:	TIME

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To:

Heather Joy Baker  
Clerk, Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 West Market Street  
Trenton, New Jersey 08611

David G. Sciarra, Esq.  
Theresa Luhm, Esq.  
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Education Law Center

Lauren Jensen, DAG  
Office of the Attorney General  
Education/Higher Education Section  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625-0112  
Attorneys for the Commissioner of  
Education for the State of New  
Jersey

RELIEF SOUGHT:

Order granting New Jersey Public  
Charter Schools Association's Motion  
to File Amicus Curiae brief as within  
time.

SUPPORTING DOCUMENTS:

Certification of Thomas O. Johnston, Esq. in Support of Motion to Appear Amicus Curiae as Within Time dated December 9, 2021 and Certification of Harold Lee dated December 7, 2021.

CERTIFICATION:

PLEASE TAKE FURTHER NOTICE that the movant hereby requests oral argument only if opposition is filed.

Respectfully Submitted,

JOHNSTON LAW FIRM LLC

By: 

THOMAS O. JOHNSTON

NJ Attorney ID: 040061998

Dated: December 9, 2021

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25 Market Street  
Trenton, NJ 08611

**Re:            *Abbott v. Burke, et. al., Supreme Court Docket  
                 No. 085333, Related Case No. 042170***

We represent the New Jersey Public Charter School Association, Inc. ("NJPCSA"). Please accept this letter brief in lieu of a more formal brief in support of NJPCSA's Motion to File for Leave to Appear *Amicus Curiae* as within time in the above entitled action and NJPCSA's proposed *amicus curiae* brief in response to Education Law Center's ("ELC") Motion in Aid of Litigant's Rights filed on or about January 28, 2021 ("ELC Motion"). We understand that ELC's motion is still pending, therefore NJPCSA respectfully requests that this Court consider its Motion for Leave to Appear *Amicus Curiae* as within time.

In sum, the ELC motion asks that this Court issue a remedial order directing the State to seek and secure such funding as is required to undertake the facilities projects contained in the



School Development Authority's ("SDA") 2019 Statewide Strategic Plan and as needed to ensure the health and safety of school buildings in SDA or *Abbott* districts. But a large portion of *Abbott v. Burke*-protected students are not represented by ELC. Indeed, ELC has explicitly disavowed representing them. NJPCSA is in a unique position to present arguments on behalf of such children, in this matter of great public import. The Court should have the benefit of reviewing NJPCSA's arguments to adequately consider the facility needs of children attending public charter schools in former *Abbott* districts. ELC will not be prejudiced by the granting of NJPCSA's motion.

**STATEMENT OF PROCEDURAL HISTORY AND INTEREST OF AMICUS CURIAE**

NJPCSA incorporates by reference its description of the procedural history in this matter and the interest of the proposed *amicus curiae* in its proposed *amicus curiae* brief dated December 8, 2021.

**LEGAL ARGUMENT**

New Jersey Court Rule 1:13-9 establishes a liberal standard for permitting amicus appearances. *Pfizer, Inc. v. Director, Div. of Taxation*, 23 N.J. Tax 421, 424 (2007). The Rule provides that the court "shall grant" a motion for such an appearance if the court is satisfied 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." R. 1:13-9.

R. 1:13-9 requires that an application to appear as amicus curiae "shall be made by motion in the [case] stating with specificity the:

- (1) identity of the applicant;
- (2) the issue intended to be addressed;
- (3) the nature of the public interest therein; and
- (4) the nature of the applicant's special interest involvement or expertise in respect thereof."

*Id.*

In determining whether to grant an amicus application, the court considers whether the applicant can assist the court by providing ". . . information pertaining to matters of law about which the court may be in doubt." *Id.* at 5, quoting, *Keenan v. Bd. of Chosen Freeholders*, 106 N.J. Super. 312 316 (App. Div. 1969). Courts also consider whether the case has "broad implications," *Id.*, quoting *Taxpayers Ass'n of Weymouth Twp, Inc. v. Weymouth Twp.*, 80 N.J. 6, 17 (1976) *cert denied*, 430 U.S. 977 (1977), or is of "general public interest." *Id.* quoting, *Casey v. Male*, 63 N.J. Super 255, 259 (Law Div. 1960).

**I. NJPCSA IS AN APPROPRIATE AMICUS CURIAE BECAUSE  
IT REPRESENTS CHILDREN WHO ATTEND CHARTER  
SCHOOLS IN ABBOTT SCHOOL DISTRICTS**

NJPCSA represents more than 42,000 public school students who attend charter schools in some of the largest Abbott school districts. Education Law Center ("ELC") disavowed representation of Abbott school children who attend public charter schools in its appeal to the Appellate Division challenging the Commissioner of Education's ("Commissioner") renewal and expansion of seven charter schools in Newark. See *In re Renewal Application of TEAM Acad. Charter Sch.*, 459 N.J. Super 111, 126 (App. Div. 2019), affirmed in part, modified in part 247 N.J. 46 (2021). NJPCSA's participation as amicus in these proceedings is necessary and appropriate. The *Abbott V* ruling requires safe and adequate facilities for all students attending public schools in Abbott school districts. *Abbott v. Burke et al.* 153 N.J. 480 (1998). No other litigant in these proceedings represents Abbott children attending charter schools in Abbott communities. NJPCSA is a proper party to these proceedings.

**A. Issues To Be Addressed**

The offerings in public education have changed dramatically in the 23 years since this Court decided *Abbott V* and the first charter schools opened their doors. While charter schools have contributed to significant improvements in academic achievement,



they receive no State funding dedicated for their school facilities. *Abbott* school children attending charter schools are no less deserving of safe and adequate school facilities than their counterparts educated in the resident school districts. Moreover, if this Court determines to remand the case to the Commissioner for fact finding, NJPCSA must be part of the policy and legislative discussions to properly implement *Abbott V*. It is these issues that NJPCSA seeks to address as amicus in these proceedings.

**B. Public Interest**

The constitutional imperative of a thorough and efficient public education has been resolutely espoused by the Supreme Court in its long line of *Abbott* decisions. The ability of families of students in the *Abbott* school districts to choose which public school their child will attend has materially improved public education for tens of thousands of *Abbott* children. Charter schools have offered a choice for a better public school education and realized the academic ambitions for *Abbott* children. The facilities that charter schools use to educate these children are inherently a matter of public interest.

**C. NJPCSA Has a Special Interest and Expertise To Offer**

The NJPCSA has a special interest in ensuring that charter school students attend safe and adequate school facilities, along with a broader duty of ensuring that State policy makers legislate



on behalf of all public school students, including those students attending charter schools. As addressed more thoroughly in the proposed Amicus brief, ELC has disavowed legal representation of charter school students. This Court's ruling would likely directly impact charter school students in Abbott school districts, and undoubtedly have a negative impact if they are not properly represented in this case. As addressed in the proposed Amicus brief, NJPCSA brings to the fore factual circumstances of a fundamentally changed educational landscape since this Court's Abbott V decision. Consideration of the pending motion should include the unique arguments that only the NJPCSA will advance.

**D. Timeliness of Motion; Standards for Leave  
To Be Granted**

ELC did not serve NJPCSA its January 28, 2021 motion despite NJPCSA moving for leave to appear *amicus curiae* in ELC's initial substantially similar November 7, 2019 motion in aid of litigants' rights. (See, Johnston Certif., Ex. A) NJPCSA seeks for this Court to consider its motion as within time. ELC will not, nor any other party, be prejudiced because NJPCSA's appearance will not materially affect any litigation timelines.

**E. Scope of Participation**

The NJPCSA seeks to participate by the filing of the attached brief and through presentation at any oral argument.

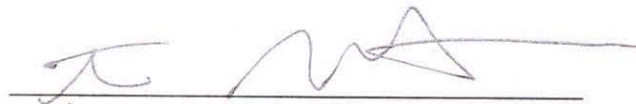
CONCLUSION

For the foregoing reasons, proposed *amicus curiae*, NJPCSA, respectfully requests the Court grant this Motion as within time, allowing leave to participate in this case.

Respectfully submitted,

JOHNSTON LAW FIRM LLC  
Attorneys for Movant New  
Jersey Public Charter School  
Association

By:

  
\_\_\_\_\_  
Thomas O. Johnston

TOJ/dk

Cc: All counsel of record via Federal Express and Email

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Re: ***Abbott v. Burke, et. al., Supreme Court Docket  
No. 085333, Related Case No. 042170***

Dear Ms. Baker:

We represent the New Jersey Public Charter Schools Association, Inc. ("NJPCSA"). Please accept this letter brief in lieu of a more formal brief as NJPCSA's proposed amicus brief in response to Education Law Center's ("ELC") Motion in Aid of Litigant's Rights filed on or about January 28, 2021, inasmuch as it excludes from the court's consideration charter school facilities in *Abbott* districts.

The *Abbott v. Burke* case law rightly addressed the gross deprivation of students in poor communities of their constitutional rights to a thorough and efficient education. In 1995, the State of New Jersey took over operation of the Newark

School District after years of proven failure to meet the educational needs of its children to such an extent that the children regressed academically the longer they remained enrolled in the district. No public school alternative was available then to parents. Children from wealthier communities far outpaced Newark children academically.

Soon after the State takeover of Newark School District, the State Legislature enacted the Charter School Program Act, effective in 1996, as one part of multi-part strategies to improve educational outcomes for poor children and meet the State's obligations to confer on its children a thorough and efficient education. Charter schools are public schools which receive less than 90 percent per student funding than the resident district, operate in accordance with its unique charters and are overseen by a board of trustees.

Today, thousands of charter school students outperform students from wealthier communities. Parents are empowered to select for themselves the public school which best meets their children's needs, whether it be in a resident school or a charter school. The charter schools' models of success are transferrable to improving resident district student performance.

ELC has inexplicably decided to not support the charter school movement in New Jersey, even though the *Abbott v. Burke*



children are excelling in charter schools. In the *Abbott* body of case law ELC relied on two then-existing conditions to establish its and its clients' standing which do not exist today. First, ELC represented all children in Abbott districts, who, at the time, overwhelmingly attended traditional resident districts. Charter schools did not commence operations until 1997 with very modest initial enrollment.

Since the Supreme Court mandated facilities funding in Abbott districts in *Abbott v. Burke*, 153 N.J. 480, 519 (1998) ("*Abbott V*"), charter school enrollment in New Jersey has grown to about 60,000 students. In Newark and Camden, charter school students comprise about one-third of public school students. ELC has explicitly disavowed representing charter school students in the matter *In re Renewal Application of TEAM Acad. Charter Sch.*, 459 N.J. Super 111, 126 (App. Div. 2019) affirmed in part, modified in part 247 N.J. 46 (2021).

Second, many of the Abbott districts were state operated. ELC consequently argued that it fell upon them to represent students in those districts because the State could not challenge its own actions. Yet since *Abbott V*, local control has returned to Newark, Paterson and Jersey City school districts. The rationale behind giving ELC and its clients' standing has greatly diminished.

With the backdrop of ELC's diminished standing, the charter school facility needs for charter school students residing in Abbott districts cannot be overlooked. Charter school facility operations have materially changed in scale and challenges given charter school enrollment growth. Charter schools are afforded no state funding for facility projects.

Any decision by this Court on the pending motion, including any remand, should explicitly include a directive that any facility review of Abbott district school facilities with respect to the meeting of thorough and efficient education mandates, must also include a review of whether sufficient resources are allocated to charter school facilities. Otherwise any assessment of Abbott community school facilities needs would knowingly exclude a large segment of its student population.

The Abbott decisions were born of judicial findings of constitutional violations against public school students in poor districts. The case law should not be construed to exclude those students attending charter schools.

#### STATEMENT OF PROCEDURAL HISTORY

In 1998, this Court held that New Jersey's constitutional educational obligation to provide a thorough and efficient education for all its students included the provision of adequate school facilities, *Abbott v. Burke*, 153 N.J. 480, 519 (1998)

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("Abbott V"). The Court ordered that the Commissioner of Education ("Commissioner") "prescribe procedures and standards to enable individual schools [in Abbott districts] to . . . secure 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; and promptly initiate effective managerial responsibility over school construction, including necessary funding measures and fiscal reforms, such as may be achieved through amendment of the Educational Facilities Act." *Id.* at 527 (1998). The Court did not exclude Abbott district children who attend charter schools in its decision. The legislature enacted the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1 et seq. in 2000.

The State Board of Education then promulgated regulations to govern school facilities projects, N.J.A.C. 6A:26-1.1 et seq.; N.J.A.C. 19:34-1.1 et seq. When these rules and regulations were enacted, charter schools served only about 1% of students in Abbott districts and were not included in the discussions on facilities funding under the EFCFA.

On or about November 7, 2019, ELC filed a motion in aid of litigants' rights to compel state compliance with the Abbott school facilities' mandates in Abbott V and the EFCFA. ELC also requested



that the State submit to the Legislature a revised statewide strategic plan of priority school facilities projects in SDA/Abbott districts.<sup>1</sup>

NJPCSA moved before this Court for leave to participate *amicus curiae* in ELC's motion on February 13, 2020. On April 1, 2020, this Court denied ELC's motion without prejudice, as premature subject to the enactment of the Fiscal Year 2021 budget. As such, NJPCSA's motion was dismissed as moot that same day. (See Certification of Thomas O. Johnston dated December 8, 2021, hereinafter "Johnston Certif.," ¶¶ 3 and 4, Exhibits A and B.) On or about January 28, 2021, ELC filed a renewed motion in aid of litigants' rights requesting similar relief as its November 2019 motion after the enactment of the Fiscal Year 2021 budget. ELC did not serve NJPCSA its renewed motion and NJPCSA was never informed of a renewed briefing schedule. On November 30, 2021, NJPCSA became aware that ELC's renewed motion is still pending. (See Johnston Certif., ¶¶ 8 and 9) and now moves this Court for leave to appear *amicus curiae* on ELC's renewed motion as within time.

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<sup>1</sup> The SDA approved its 2019 Statewide Strategic Plan on January 21, 2020.  
[https://www.njsda.gov/NJSDA/Content/Agenda/2020Agenda/Agenda\\_01212020.pdf](https://www.njsda.gov/NJSDA/Content/Agenda/2020Agenda/Agenda_01212020.pdf) (last accessed December 8, 2021).



INTEREST OF THE AMICUS

The NJPCSA is a non-profit membership association that represents the charter school community and the students and parents they serve to advance quality public education for New Jersey's children through the cultivation of quality public charter schools. (See Certification of Harold Lee dated December 7, 2021, hereinafter, "Lee Certif.", ¶¶ 1, 3). NJPCSA's membership is comprised of New Jersey charter schools and associate members committed to advancing the charter school movement in New Jersey. Its work focuses on three areas: advocacy, school services, and research. (See Lee Certif. ¶3).

In 1997, the first charter schools opened their doors in New Jersey. There are currently 87 charter schools serving 60,000 students and 36,000 students on waitlists for charter schools. (See Lee Certif., Exhibit A). Charter Schools overwhelmingly serve students in historically underserved communities. Public charter schools serve 1 in 6 public school students in New Jersey's 31 poorest communities. (See Lee Certif., Exhibit A). Of the 60,000 students served by charter schools in New Jersey, over 42,000 of them attend charter schools in Newark, Paterson, Jersey City, Camden, Trenton and Plainfield, among the largest Abbott districts. (See Lee Certif., Exhibits B-G). Charter schools serve

12% of all public school Black students and 6% of all public school Hispanic students. (See Lee Certif., Exhibit A).

This charter school growth in New Jersey has contributed to significant improvements in student achievement in Abbott districts. For example, in the 2018-2019 school year<sup>2</sup>, TEAM Academy Charter School's ("TEAM") performance in (English Language Arts ("ELA") and Math was close or at the statewide average<sup>3</sup>; North Star Charter School was at the high average range.<sup>4</sup> (In stark contrast to the historical student academic underperformance in Abbott districts). Yet eighty-nine percent of TEAM's students are economically disadvantaged. (See footnote 3). In the same school year, North Star Academy Charter School's median student growth percentiles were 50% in ELA and 55% in Math. Performance on statewide assessments met, and nearly exceeded statewide averages. 85.7% of North Star's students are economically disadvantaged.

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<sup>2</sup> On March 24, 2020, Governor Phil Murphy issued an Executive Order cancelling statewide assessments for the Spring 2020 testing window due to the COVID-19 pandemic. Therefore, assessments from the 2018-2019 school year are the most recent available assessments. See <https://nj.gov/infobank/eo/056murphy/pdf/EO-117.pdf> (last accessed December 8, 2021).

<sup>3</sup> <https://navilp7rg08njprsharedst.blob.core.windows.net/perf-reports-ct/historical/School-Detail/2018-2019/80-7325-965.pdf> (last accessed December 8, 2021).

<sup>4</sup> <https://navilp7rg08njprsharedst.blob.core.windows.net/perf-reports-ct/historical/School-Detail/2018-2019/80-7320-960.pdf> (last accessed December 8, 2021).

(See footnote 4). Charter schools have achieved this growth despite being limited by receiving on average, \$4,400 less in per pupil funding when compared to traditional districts. (See Lee Certif. Exhibit H). They have also achieved this growth without any facility funding from the state. (See Lee Certif. ¶4).

Charter schools, and particularly those in Abbott districts, need facilities funding from the state to continue the delivery of a thorough and efficient education for their students. On average, charter schools spend \$1,500 per pupil on facilities costs, all out of their operating budgets. (See Lee Certif., Exhibit H). Since 2001, New Jersey has spent nearly \$13 billion on public school facilities with none going to charter school facility projects. (See Lee Certif., Exhibit H).



LEGAL ARGUMENT

I. ELC HAS DIMINISHED ABILITY IN THIS MATTER TO REPRESENT THIS PLAINTIFF CLASS BECAUSE IT HAS DISAVOWED REPRESENTATION OF CHARTER SCHOOL STUDENTS IN ABBOTT DISTRICTS AND THE RATIONALE BEHIND ELC'S REPRESENTATION NO LONGER EXISTS

In *Abbott v. Burke* 100 N.J. 269 (1985) ("Abbott I"), ELC was certified to represent a plaintiff class that included "all children residing and attending public school in the school districts of Camden, East Orange, Irvington, and Jersey City." *Id.* at 277, fn\*1 (emphasis added). The Charter School Program Act was enacted 10 years later.

In its initial motion, ELC reiterated that it purports to represent "a certified class comprised of all children attending public schools in the thirty-one poorer urban districts or 'SDA districts' designated in this litigation for remedial measures, including school facilities improvements, to address a profound and long standing violation of their constitutional right to a through and efficient education." (See Certification of David Sciarra dated November 7, 2019 in support of ELC's Motion in Aid of Litigants' Rights, ¶1) (emphasis added).

Yet, in ELC's appeal of the Commissioner of Education's grant of charter school renewal and enrollment expansions in 2016, it disavowed representation of *Abbott* children who attend charter schools. The Newark charter schools challenged ELC's standing to



appeal. ELC responded, “. . .the class of Abbott students it represents includes only traditional public school students, whose right to a thorough and efficient education is jeopardized by the Commissioner’s action.” *In re Renewal Application of TEAM Acad. Charter Sch.*, 459 N.J. Super 111, 126 (App. Div. 2019) (emphasis added), affirmed in part, modified in part 247 N.J. 46 (2021).

In a motion purportedly brought on behalf of all children in Abbott districts, ELC devotes no attention to the educational best interests of the Abbott children who attend charter schools, over 42,000 of them. ELC should not be heard by this Court, premised on advocating for a class of children when, it is in fact excluding a large portion of that class.

ELC has also asserted standing to represent Abbott plaintiffs based on the state-operated status of many Abbott districts. See N.J.S.A. 18A:7A-35(a). At the time of *Abbott V* and the enactment of the EFCFA, several Abbott districts were under state control for failing to provide a thorough and efficient system of education for its children pursuant to N.J.S.A. 18A:7A-15. Newark has been state operated since 1995.<sup>5</sup> Paterson District has been a state operated school district since 1991.<sup>6</sup> Jersey City has been state

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<sup>5</sup> <https://www.nps.k12.nj.us/info/district-history/> (last accessed December 8, 2021).

<sup>6</sup> <https://www.northjersey.com/story/news/passaic/paterson/2018/05/>

operated since 1989.<sup>7</sup> Since the EFCFA, those local districts have returned to local control. (See *id.*) Indeed, in *In re TEAM*, Newark School District moved to intervene before this Court to take ELC's side in that appeal. (See SC Docket No. 08214, Motion for Leave to Appear as Amicus Curiae dated July 18, 2019).

The basis for ELC's representation of Abbott plaintiffs has diminished since they do not represent charter school students residing in Abbott districts and state-operated districts have returned to local control.

**II. EVEN IF, ASSUMING ARGUENDO, ELC IS NOT  
CONFLICTED IN ITS REPRESENTATION OF ABBOTT  
DISTRICT CHILDREN, ANY REMAND OR ORDERED  
REMEDIES SHOULD INCLUDE CONSIDERATION OF THE  
EDUCATIONAL FACILITY NEEDS OF CHILDREN WHO  
ATTEND CHARTER SCHOOLS IN ABBOTT DISTRICTS**

Charter school students in Abbott districts are outperforming traditional public schools with less funding and its funding is derivative of Abbott district funding, serving the same student population. As goes district funding so goes the charter schools' funding, albeit at a lower percentage. On average, charter schools receive \$4,400 less in per pupil funding when compared to traditional districts. (See Lee Certif. Exhibit H.) The funding

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02/new-jersey-end-state-control-patersons-schools-vote-expected-wednesday/569727002/ (last accessed December 8, 2021).

7

[https://www.nj.com/education/2017/07/nj\\_ends\\_state\\_takeover\\_of\\_jersey\\_citys\\_public\\_scho.html](https://www.nj.com/education/2017/07/nj_ends_state_takeover_of_jersey_citys_public_scho.html) (last accessed December 8, 2021).

inequity is even more drastic when facilities aid is factored in. On average, charter schools spend \$1,500 per pupil on facilities costs, all out of their operating budgets. (See Lee Certif., Exhibit H.)

This Court held that New Jersey's constitutional obligation to provide a thorough and efficient education for all its students included the provision of adequate school facilities. *Abbott V*, 153 N.J. 480, 519 (1998). The Court did not exclude *Abbott* children who attend charter schools in *Abbott V*.

In *J.D. ex rel. Scipio-Derrick v. Davy*, 415 N.J. Super. 375 (App. Div. 2010), the Appellate Division upheld a dismissal of claims brought by charter school parents in Newark on equal protection grounds. But in that appeal, the Appellate Division described charter schools as "transitory" and "may come and go." The growth of charter school enrollment since that decision belies that statement. For example, TEAM Academy Charter School served 4,329 students in the 2018-2019 school year.<sup>8</sup> North Star served 5,366 students in the 2018-2019 school year.<sup>9</sup>

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<sup>8</sup> <https://navilp7rg08njprsharedst.blob.core.windows.net/perf-reports-ct/historical/School-Detail/2018-2019/80-7325-965.pdf> (last accessed December 8, 2021).

<sup>9</sup> <https://navilp7rg08njprsharedst.blob.core.windows.net/perf-reports-ct/historical/School-Detail/2018-2019/80-7320-960.pdf> (last accessed December 8, 2021).



The presence and growth of charter schools directly confers a thorough and efficient education on Abbott children through its inclusion in the public school offerings in *Abbott* districts. See *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 334-336 (2000).

As such, Abbott children who attend charter schools deserve to be considered in any remand proceeding regarding educational facilities funding.

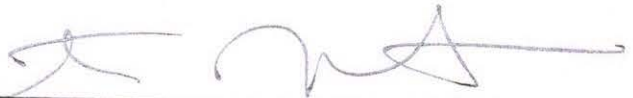
**CONCLUSION**

For the foregoing reasons, any remedial measures ordered by the court, including a remand, should direct consideration of charter school facility needs located in Abbott districts.

Respectfully submitted,

JOHNSTON LAW FIRM LLC  
Attorneys for Movant New  
Jersey Public Charter Schools  
Association

By:

  
\_\_\_\_\_  
Thomas O. Johnston



**JOHNSTON LAW FIRM LLC**

Thomas O. Johnston, Esq. (Id: 040061998)

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Montclair, NJ 07042

(Tel) 973-447-4610

Attorneys for Movant,

New Jersey Public Charter Schools Association, Inc.

RAYMOND ARTHUR BURKE; et al.,

Plaintiffs,

v.

FRED G. BURKE; et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 085333

RELATED SC CASE NO.: 42,170

CIVIL ACTION

**CERTIFICATION OF HAROLD LEE IN  
SUPPORT OF NEW JERSEY PUBLIC  
CHARTER SCHOOLS ASSOCIATION  
MOTION FOR LEAVE TO APPEAR AS  
*AMICUS CURIAE***

I, HAROLD LEE, of full age, hereby certifies as follows:

1. I currently serve as President and CEO for the New Jersey Public Charter Schools Association ("NJPCSA").

2. From April 2014 to July 2016, I served as Director in the New Jersey Department of Education Office of Charter and Renaissance Schools.

3. NJPCSA represents the state's charter school community and the students and parents they serve to advance quality public education for New Jersey's children through the cultivation of quality public charter schools. NJPCSA's membership is comprised of New Jersey charter schools and associate members committed to advancing the charter school movement in New Jersey. NJPCSA is

the only state-wide association for New Jersey charter schools. Our work focuses on three areas: advocacy, school services, and research.

4. Charter schools do not receive any funding from the State of New Jersey for its educational facilities.

5. The 87 charter schools in New Jersey currently serve 60,000 students.

6. Over 42,000 students attend charter schools in Newark, Paterson, Jersey City, Camden, Trenton and Plainfield, which are among some of the largest Abbott districts.

7. Currently, charter schools serve about 16% of all students in Abbott districts. In 1998, charter schools served about 1% of all students in Abbott districts.

8. NJPCSA publishes annual fact sheets on its website at <https://www.njcharters.org/research-data/>. The information contained therein is derived from publicly available information from the New Jersey Department of Education Fall Survey Data (2010-2021). <https://www.state.nj.us/education/data/enr/>.

9. A true and correct copy of NJPCSA's New Jersey Charter School Facts for the 2021-2022 school year is attached hereto as Exhibit A.

10. A true and correct copy of NJPCSA's Newark Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit B.

11. A true and correct copy of NJPCSA's Paterson Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit C.

12. A true and correct copy of NJPCSA's Jersey City Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit D.

13. A true and correct copy of NJPCSA's Camden Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit E.

14. A true and correct copy of NJPCSA's Trenton Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit F.

15. A true and correct copy of NJPCSA's Plainfield Charter School Facts for the 2020-2021 school year is attached hereto as Exhibit G.

16. NJPCSA regularly submits requests to the New Jersey Department of Education, Division of Finance, Office of Finance pursuant to the Open Public Meetings Act ("OPRA") for annual charter school aid summaries which are not available online. NJPCSA then compares these charter school aid summaries with district aid summaries available at <https://www.nj.gov/education/stateaid/> to create its annual Charter School Funding Fact Sheet.

17. A true and correct copy of NJPCSA's Charter School Funding and Facilities Fact Sheet for the 2020-2021 school year is attached hereto as Exhibit H.

18. NJPCSA has worked closely with our charter school members to respond to the sudden demands on school facilities arising out of the COVID-19 pandemic. Charter schools require more funding to adequately comply with Center for Disease Control and State guidelines for maintaining facilities which mitigate risks of COVID-19 transmittals. Moreover, charter schools, like traditional school districts, require additional state funding to effectively plan for another health emergency, premised on knowledge gained from the COVID-19 pandemic. Such plans include updating and/or replacing facility HVAC systems, constructing flexible and swing space to respond to health emergencies and improving facility designs to mitigate the risk of the air-borne transmittal of diseases.

19. The following are some specific examples of the urgent facility needs of New Jersey charter schools:

- a. Paterson Charter School for Science and Technology serves 1573 students that owns a 30,000 sq. three-story building in downtown Paterson. The school did not have enough funds to replace the gas-fired rooftop units to bring them up to the higher standards of Indoor Air Quality due to the COVID-19 pandemic. Seven units need



to be replaced at a total cost of \$175,000 to upgrade the HVAC systems.

b. Queen City Academy Charter School in Plainfield serves 324 students. The school needs to replace all its windows in the K-8 building as many cannot be opened. Due to the pandemic, the ability to open windows is critical. Replacing all windows in the school is estimated to cost \$750,000 to \$900,000 based on the current price of materials.

c. Learning Community Charter School in Jersey City serves 531 students that owns its own building and needs to replace its entire roof; the roof is in such bad shape that it leaks when it rains and had to cancel school one day due to concerns with the roof. The school projects that the project will cost between \$1.4 million and \$1.6 million.

CERTIFICATION

I certify that the foregoing statements made by me are true.

I am aware that if they are not true, I am subject to punishment.

A handwritten signature in dark ink, appearing to be 'H2' or similar, written over a horizontal line.

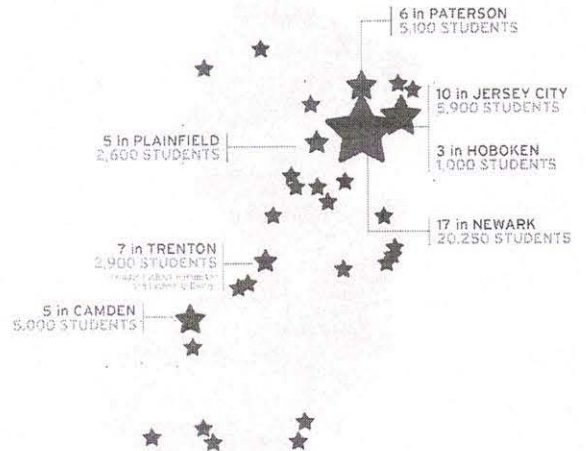
December 7, 2021

# EXHIBIT A

# Get the Facts

## New Jersey's Public Charter Schools

2021-22



### What Is a Public Charter School?

Charter schools are free, nonprofit public schools that are open to all students. They operate with more flexibility than traditional public schools in exchange for increased accountability including rigorous financial, academic and operational standards.



Public charter schools serve 1 in 6 public school students in NJ's 31 poorest communities (former Abbott/SDA districts).

### NEW JERSEY HAS

**87**

CHARTER SCHOOLS

IN **40** CITIES

AND **18** COUNTIES



**60,000**  
STUDENTS



**36,000**  
CHARTER  
WAITLIST TOTAL

SOURCE: School count (2020-21) and districts, towns/counties (March 2020) and Point Locations (announced with Charter City Council, ADA Market Share (10/15/20) and notice out)

### KEY DEMOGRAPHICS

**49%**  
Black

**37%**  
Latinx

**72%**  
Low-income  
Households

**10%**  
Special  
Needs

**4%**  
English Language  
Learners



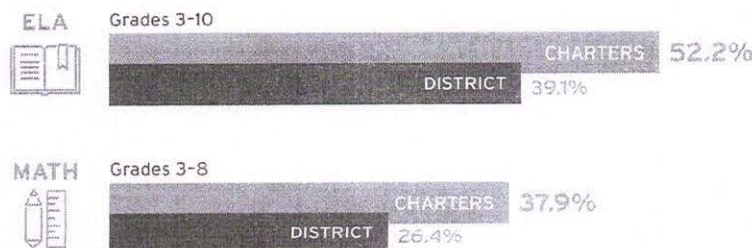
Charter schools serve **12%** of all public school Black students.

Charter schools serve **6%** of all public school Latinx students.

SOURCES: EdSource (2019-20 latest) available ENRS, Enrollment report (July 2020-21) Supplemental and 2019-20, on Newark, Low-income (2015-2019) 10-15, on Newark, Special Ed & ELL (2018-19) per report, Waitlist (2019-19) Annual Reports on Newark

### PERFORMANCE

#### 2018-19 Percent of Students Meeting or Exceeding Expectations



Charter students are **33%** more likely to read at grade level, and **44%** more likely to do math at grade level.

#### Black Charter Students

**+12%** in ELA

**+14%** in math

#### Latinx Charter Students

**+5%** in ELA

**+4%** in math

#### Economically Disadvantaged Charter Students

**+9%** in ELA

**+10%** in math

Low-income students of color are thriving in New Jersey's public charter schools and outperforming their counterparts statewide.

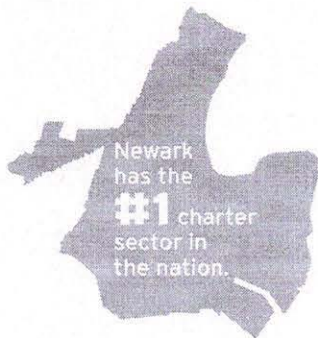




## NEWARK'S CHARTER SCHOOLS

### Providing a World Class Education

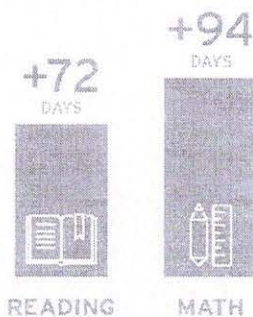
Newark's public charter school students, **84%** of whom come from low income backgrounds, have **outperformed the state average** on the state test in grades 3-8 two years in a row.



**75%** of Newark's charter school students are enrolled in a school beating the odds vs. 16% in the district.\*

\*2020 study from MarGrady Research

Newark charter schools post best student learning gains in the nation



Students learn more in charter schools with gains of **72 additional days per year in reading** and **94 additional days per year in math** when compared to the state average. Newark's charter schools also outperform Newark's selective enrollment magnet schools in Math three years in a row.

Source: 2021 CREDO Stanford University Research

## FUNDING

### Public Charter Schools Are Deeply Underfunded

57,000 public school students in charter schools are not funded equitably in New Jersey. On average, **public charter schools receive approximately \$4,400 less per student per year** when compared to traditional district schools. Charter schools also spend on average \$1,500 per year per student on school facilities but receive zero dollars from the state while traditional school districts have received more than \$13 billion since 2001 for the same purpose.



CHARTERS RECEIVE

**\$4,400**

**LESS PER STUDENT**  
Compared to traditional school districts

CHARTERS NEED

**\$900 MILLION**

**OVER THE NEXT DECADE FOR SAFE AND SECURE FACILITIES**

## ACCOUNTABILITY TO FAMILIES

Public charter schools have **greater flexibility** to bring in new and creative approaches, and with that flexibility comes **greater accountability**. Public charter schools:



Provide **financial reports** to the state and conduct an annual audit



Must meet all state and federal education standards



Must be renewed every five years—and face closure if not delivering results

## AUTONOMY EMPOWERS CREATIVITY

Public charter schools have more autonomy over their budgets, curriculum, and personnel than traditional districts. Teachers at public charter schools are empowered to use **creative approaches** to meet the individual needs of students in their classroom. Public charter schools include incredibly **diverse learning models**, including:



Hoboken Dual Language Charter School

Hoboken Dual Language Charter School provides an exceptional education in Spanish and English to develop engaged, well-rounded bilingual citizens with a global and multicultural perspective.



Foundation Academy Charter School in Trenton ensures that all students secure the academic knowledge and skills to prepare them for the nation's finest colleges and to instill in them the core values of caring, respect, responsibility, and honesty.



Unity Charter School in Morristown infuses Education for Sustainability throughout the school culture. Student agency drives critical thinking and inspires advocacy through a constructivist learning approach so that students graduate ready to change the world for the better.

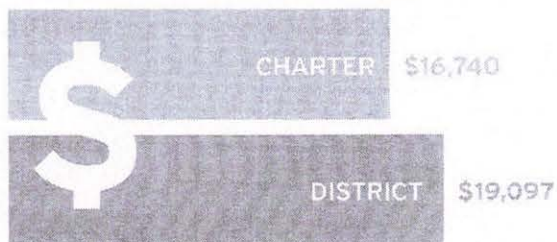


NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org

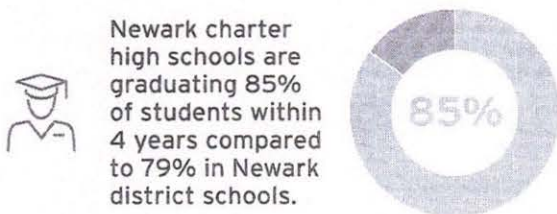
## EXHIBIT B

## FUNDING



Charter schools in Newark receive \$2,357 less, per student, than district schools.

## GRADUATION RATE



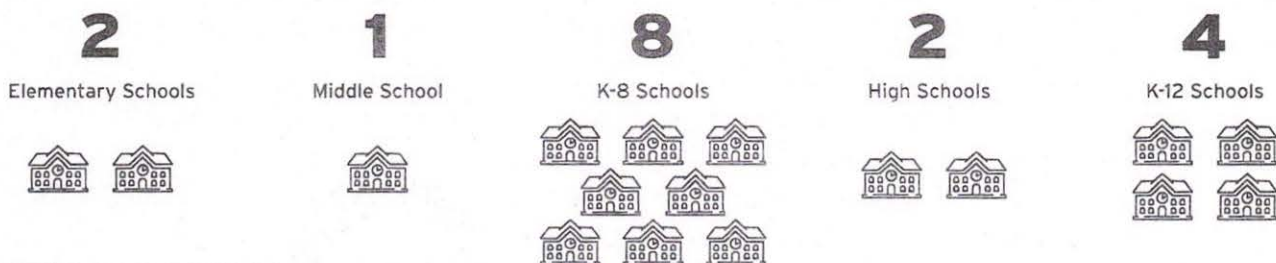
## SCHOOLS

Achieve Community Charter School (2017, K-8)	346
Discovery Charter School (1999, 4-8)	100
Gray Charter School (2000, K-8)	364
Great Oaks Legacy Charter School (2011, PreK-12)	1,822
LEAD Academy Charter School (2017, 9-12)	235
Link Community Charter School (2014, K-8)	299
Maria L. Varisco-Rogers Charter School (1999, K-8)	558
Marion P. Thomas Charter School (1999, K-12)	1,391
New Horizons Community Charter School (1999, K-7)	451
Newark Educators' Community Charter School (2009, PreK-5)	217
North Star Academy Charter School (Uncommon) (1997, K-12)	6,275
People's Preparatory Charter School (2011, 9-12)	380
Philip's Academy Charter School (2013, PreK-8)	478
Robert Treat Academy Charter School (1997, K-8)	689
Roseville Community Charter School (2011, K-4)	279
TEAM Academy Charter School (KIPP NJ) (2002, K-12)	5,253
University Heights Charter School (2006, PreK-8)	742

## KEY DEMOGRAPHICS



## CHARTER SCHOOLS BY GRADES SERVED



## ACCESS AND EQUITY

**11** charter schools, representing 90% of charter enrollment, are implementing weighted lotteries to serve more economically disadvantaged and special needs students through Newark's universal enrollment system.

The percentage of Newark charter schools serving students with disabilities has

**doubled**  
since 2009 to 11% in 2019.

**2X**

NEW JERSEY  
PUBLIC CHARTER SCHOOL  
ASSOCIATION

NJCharters.org



# EXHIBIT C



# Paterson Charter School Facts

2020-21

Charter schools in Paterson receive \$2,777 less, per pupil, than district schools.

\$14,589  
CHARTER  
\$17,365  
DISTRICT



## ENROLLMENT



6

NUMBER OF  
CHARTER SCHOOLS



5,235

CHARTER  
ENROLLMENT



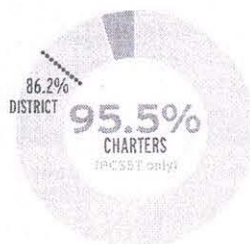
5,000

CHARTER  
WAITLIST TOTAL\*

## SCHOOLS

- College Achieve Paterson Charter School (2017, K-12)
- Community Charter School of Paterson (2008, K-8)
- John P. Holland Charter School (2011, PK-8)
- Paterson Arts and Science Charter School (2013, K-12)
- Paterson Charter School for Science & Technology (2003, K-12)
- Philip's Academy Charter School of Paterson (2016, K-8)

*Parentheses contain the year each charter school opened and the current grade levels it serves.*

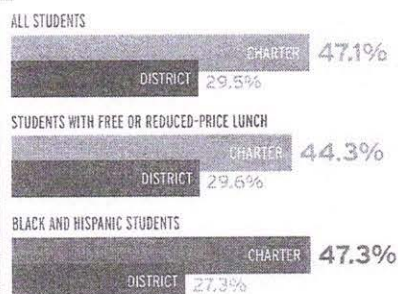


Paterson charter high schools are graduating 95.5% of students within 4 years compared to 86.2% in Paterson district schools.

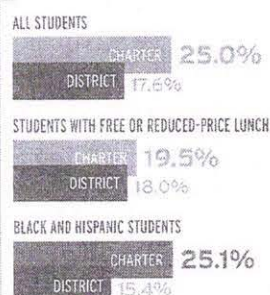
## PERFORMANCE

2018-19 Student Achievement Grades 3-11  
(Proficiency Rates)

### ELA



### MATH



## DEMOGRAPHICS

30%

Black



67%

Hispanic



90%

Economically  
Disadvantaged



9%

Students with  
Disabilities



8.2%

English Language  
Learners

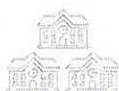


## SCHOOLS BY GRADES SERVED



3

K-8  
Schools



3

K-12  
Schools

Updated February 2020



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org

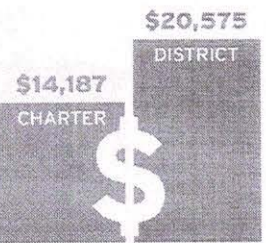
## EXHIBIT D



# Jersey City Charter School Facts

2020-21

Charter schools in  
Jersey City receive  
\$6,388 less, per pupil,  
than district schools.



## ENROLLMENT



**10**

NUMBER OF  
CHARTER SCHOOLS



**5,970**

CHARTER  
ENROLLMENT



**4,800**

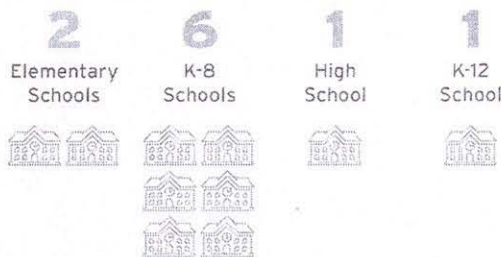
CHARTER  
WAITLIST TOTAL\*

## SCHOOLS

- BelovED Community Charter School (2012, K-12)
- Dr. Lena Edwards Academic Charter School (2011, K-8)
- Empowerment Academy Charter School (2015, K-3)
- Jersey City Community Charter School (1997, K-8)
- Jersey City Global Charter School (2013, K-6)
- Jersey City Golden Door Charter School (1998, PreK-8)
- Learning Community Charter School (1997, PreK-8)
- Soaring Heights Charter School (1997, K-8)
- The Ethical Community Charter School (2009, K-8)
- University Academy Charter High School (2002, 9-12)

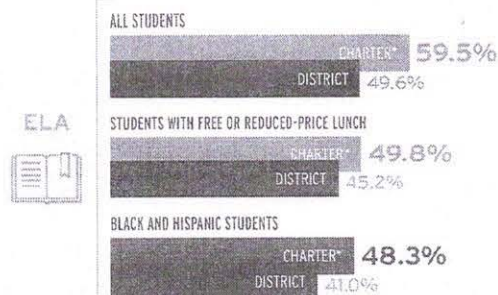
Parentheses contain the year each charter school opened and the current grade levels it serves.

## SCHOOLS BY GRADES SERVED

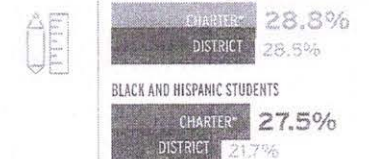


## PERFORMANCE

### 2018-19 Student Achievement Grades 3-11 (Proficiency Rates)



## MATH



## DEMOGRAPHICS

**35%**

Black

**27%**

Hispanic

**23%**

Asian

**11%**

White

**61%**

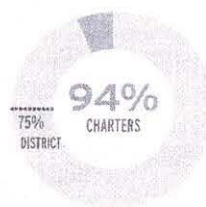
Economically  
Disadvantaged

**7.3%**

Students with  
Disabilities

**4.5%**

English Language  
Learners



Jersey City charter  
high schools are  
graduating 94% of  
students within 4  
years compared to  
75% in Jersey City  
district schools.



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org

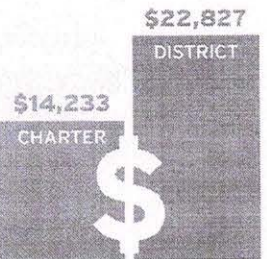


# EXHIBIT E

# Camden Charter School Facts

2020-21

Charter schools in  
Camden receive  
\$8,593 less, per pupil,  
than district schools.



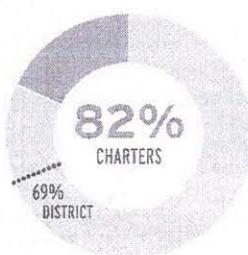
## ENROLLMENT



## SCHOOLS

- Camden's Promise Charter School (1998, K-12)
- Environment Community Opportunity (ECO) Charter School (2005, K-6)
- Freedom Prep Charter School (2004, K-12)
- Hope Community Charter School (2013, K-8)
- LEAP Academy Charter School (1997, K-12)

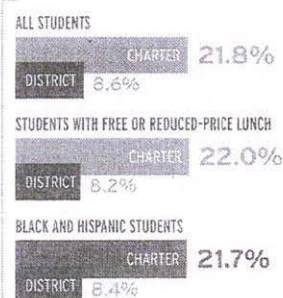
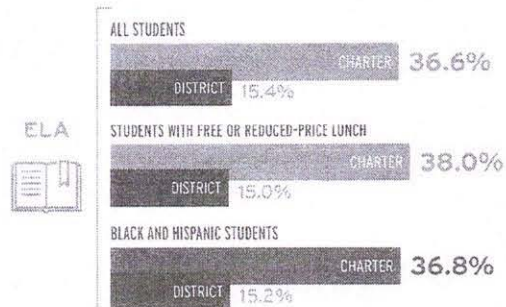
Parentheses contain the year each charter school opened and the current grade levels it serves.



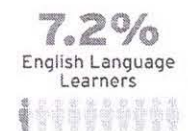
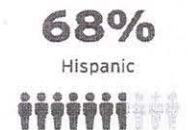
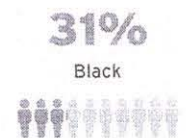
Camden charter high schools are graduating 82% of students within 4 years compared to 69% in Camden district schools.

## PERFORMANCE

### 2018-19 Student Achievement Grades 3-11 (Proficiency Rates)



## DEMOGRAPHICS



## SCHOOLS BY GRADES SERVED



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org

# EXHIBIT F

# Trenton Charter School Facts

2020-21

Charter schools in Trenton receive \$2,959 less, per pupil, than district schools.



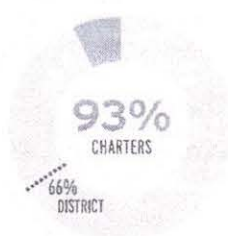
## ENROLLMENT



## SCHOOLS

- Achiever's Early College Prep Charter School (2018, 6-8, Growing to 6-12)
- Foundation Academy Charter School (2007, K-12)
- International Charter School of Trenton (1998, K-4)
- Pace Charter School of Hamilton (1995, K-6)
- Paul Robeson Charter School for the Humanities (2008, 4-8)
- Trenton STEM-to-Civics Charter School (2014, 9-12)
- The Village Charter School (1999, K-8)

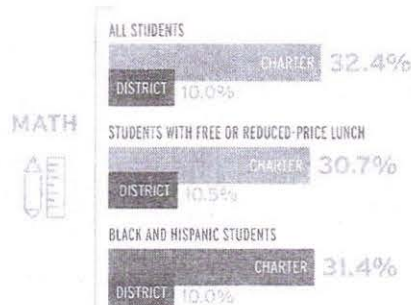
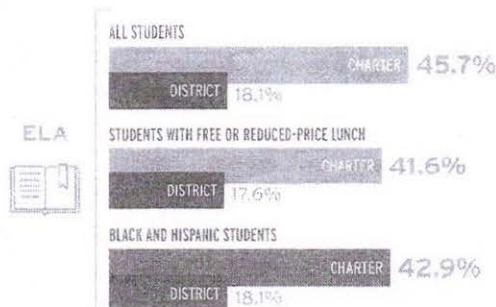
Parentheses contain the year each charter school opened and the current grade levels it serves.



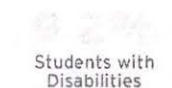
Trenton charter high schools are graduating **93%** of students within 4 years compared to **66%** in Trenton district schools.

## PERFORMANCE

2018-19 Student Achievement Grades 3-11  
(Proficiency Rates)



## DEMOGRAPHICS



## SCHOOLS BY GRADES SERVED



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org



# EXHIBIT G

# Plainfield

## Charter School Facts

2020-21

### ENROLLMENT



**5**

NUMBER OF  
CHARTER SCHOOLS



**2,650**

CHARTER  
ENROLLMENT



**820**

CHARTER  
WAITLIST TOTAL

\$12,924  
CHARTER

\$16,497  
DISTRICT

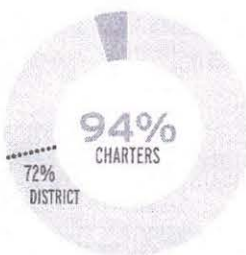


Charter schools in  
Plainfield receive  
\$3,573 less, per pupil,  
than district schools.

### SCHOOLS

- College Achieve Central Charter School's (2015, K-12)
- Cresthaven Academy Charter School's (2016, K-8)
- The Barack Obama Green Charter High School's (2010, 9-12)
- The Queen City Academy Charter School's (2000, K-12)
- Union County TEAMS (Technology, Engineering, Architecture, Mathematics and Science) Charter School (2005, K-12)

Parentheses contain the year each charter school opened and the current grade levels it serves.

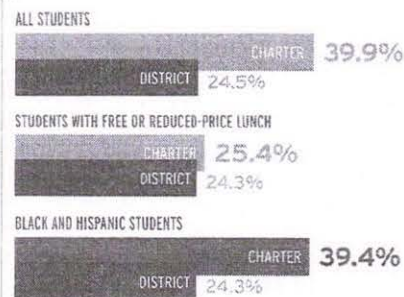


Plainfield charter high schools are graduating 94% of students within 4 years compared to 72% in Plainfield district schools.

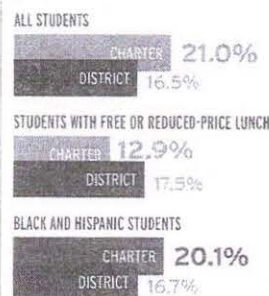
### PERFORMANCE

#### 2018-19 Student Achievement Grades 3-11 (Proficiency Rates)

##### ELA



##### MATH



### DEMOGRAPHICS

**32%**

Black



**68%**

Hispanic



**73%**

Economically  
Disadvantaged



**8.3%**

Students with  
Disabilities



**18%**

English Language  
Learners



### SCHOOLS BY GRADES SERVED



**1**

K-8  
School



**1**

High  
School



**3**

K-12  
Schools



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

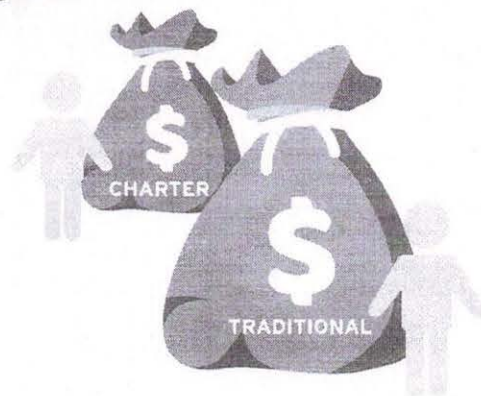
NJCharters.org

# EXHIBIT H

# Charter School Funding

2020-21

Every child in New Jersey deserves to go to a school that is funded equitably so that all public school students are treated the same regardless of what school model (public charter or traditional district school) their families chose.



On average, public charter schools receive

## \$4,400 less

in per pupil funding when compared to traditional districts.

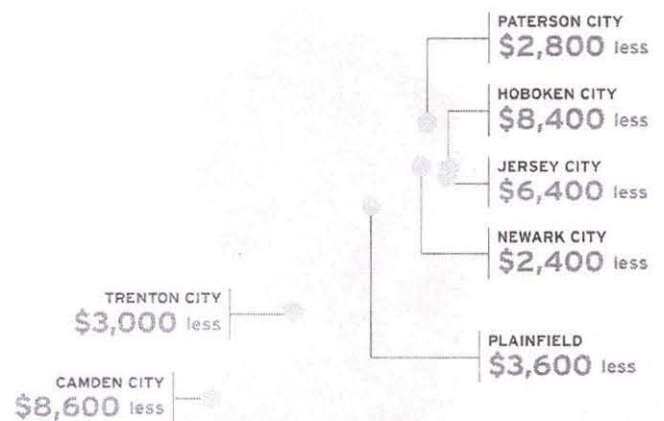
### SOURCES OF STATE AID

This table identifies which state aid streams are received by charter schools and traditional school districts.

	Public Charter Schools	Traditional School Districts
<b>EQUALIZATION AID</b> <small>Including Aid to Specific Ed &amp; Speech Only Students</small>	✓	✓
<b>LOCAL LEVY</b>	✓	✓
<b>ADJUSTMENT AID</b>	✗	✓
<b>SDA CONSTRUCTION &amp; GRANTS</b>	✗	✓
<b>DEBT SERVICE AID</b> <small>Types 1 &amp; 2</small>	✗	✓
<b>SPECIAL EDUCATION CATEGORICAL AID</b>	✓	✓
<b>SECURITY CATEGORICAL AID</b>	✓	✓
<b>EDUCATIONAL ADEQUACY AID</b>	✗	✓
<b>PRESCHOOL AID</b> <small>Excludes 4-year-olds</small>	✓	✓
<b>TRANSPORTATION AID</b>	✗	✓
<b>CHARTER SCHOOL HOLD HARMLESS AID</b>	✓	✗

### URBAN FUNDING GAPS

Charter Schools are Underfunded in NJ Urban Districts

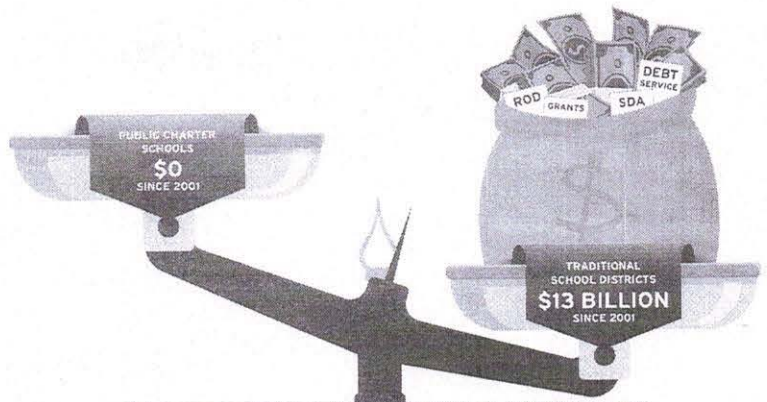




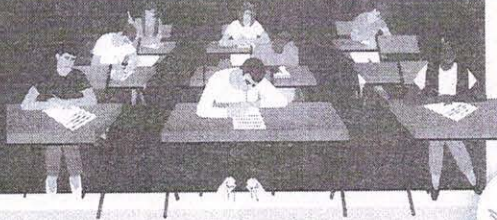
## PUBLIC CHARTER SCHOOL FACILITIES

Every child in New Jersey deserves to go to a school in a safe, clean and welcoming school building, particularly students in high-need districts.

Charter schools, on average, spend \$1,500 per student for school buildings – money that would otherwise be spent on teachers or students in the classroom – but they have been excluded from any state facilities funding.



New Jersey is one of the few states in the country that does not provide facilities aid to public charter schools.



Since 2001, the State has provided \$13 billion to districts for school construction – public charter schools received \$0.

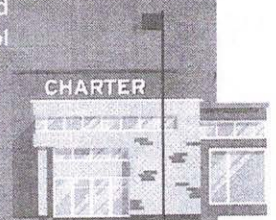
# \$0



Public charter and renaissance schools are excluded from facilities funding even though they serve 1 in 5 public school students in our 31 poorest communities.



This lack of state funding has forced charter schools to spend millions of dollars to find school buildings and perform critical safety upgrades, money that could be better spent in the classroom and increasing teacher salaries.



Public charter and renaissance schools need \$900 million in construction, renovation, or capital improvement funds over the next decade to provide safe and secure school buildings for their students.

# \$900 million



NEW JERSEY  
PUBLIC CHARTER SCHOOLS  
ASSOCIATION

NJCharters.org

**JOHNSTON LAW FIRM LLC**

Thomas O. Johnston, Esq. (Id: 040061998)

151 Forest Street, Suite A

Montclair, NJ 07042

(Tel) 973-447-4610

Attorneys for Proposed *Amicus Curiae*

New Jersey Public Charter Schools Association, Inc.

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	:	SUPREME COURT OF NEW JERSEY
RAYMOND ARTHUR ABBOTT, ET AL.,	:	
	:	DOCKET NO. 085333
Plaintiffs,	:	
	:	Civil Action
v.	:	
	:	
FRED G. BURKE, ET AL.,	:	<b>CERTIFICATION OF</b>
	:	<b>THOMAS O. JOHNSTON, ESQ.</b>
Defendants	:	
	:	
	:	

---

I, THOMAS O. JOHNSTON, of full age, hereby certify as follows:

1. We are counsel to New Jersey Public Charter Schools Association, formerly known as the New Jersey Charter Schools Association (hereinafter, "NJPCSA").

2. Appellant Education Law Center ("ELC") filed a Motion in Aid of Litigants' Rights under Supreme Court of New Jersey Docket No. 083626 on November 7, 2019.

3. NJPCSA filed a Motion for Leave to Appear *Amicus Curiae* on February 13, 2020. A true and correct copy of that Notice of Motion is attached hereto as **Exhibit A**.

4. On April 1, 2020, this Court dismissed NJPCSA's motion as moot, pursuant to another order dated that same day denying



ELC's motion as premature. A true and correct copy of that Order is attached hereto as **Exhibit B**.

5. Appellant Education Law Center filed a renewed Motion in Aid of Litigants' Rights on January 28, 2021, per assigned Supreme Court Docket No. 085333.

6. Pursuant to R. 2:8-1(b), briefs in opposition to ELC's motion were due 10 days after service of ELC's motion papers, or February 8, 2021.

7. Pursuant to R. 1:13-9, the day when the last brief was due from any party was February 8, 2021.

8. ELC did not serve a copy of their January 28, 2021 motion on NJPCSA or on us.

9. NJPCSA became aware that ELC's renewed motion was pending before this Court on November 30, 2021.

10. NJPCSA seeks for its Motion for Leave to Appear *Amicus Curiae* dated December 8, 2021 be accepted by this Court as within time.

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

A handwritten signature in blue ink, appearing to read 'T. O. Johnston', is written over a horizontal line.

THOMAS O. JOHNSTON  
NJ Attorney ID: 040061998

JOHNSTON LAW FIRM LLC  
*Attorneys for New Jersey Public  
Charter Schools Association*  
151 Forest St., Suite A  
Montclair, NJ 07042  
(973) 447-4610

Dated: December 8, 2021



# EXHIBIT A

**JOHNSTON**  
— LAW FIRM LLC —

MONTCLAIR, NJ NEW YORK, NY

THOMAS O. JOHNSTON  
tjohnston@johnstonlawfirmllc.com  
Member NJ and NY Bars

February 13, 2020

**VIA FEDERAL EXPRESS**

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

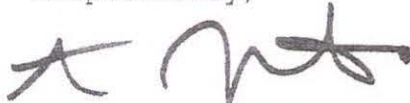
**Re:           Abbott v. Burke, et. al., Supreme Court Docket  
              No. 083626, Related Case No. 042170**

Dear Ms. Baker,

We are counsel to the New Jersey Charter Schools Association, Inc. ("NJCSA"). Per Court Services Supervisor Lauren Mignone's, request, enclosed please find copies of originals with "wet" signatures of NJCSA's notice of motion for leave to appear as *amicus curiae* in the above captioned matter, as well as a letter brief, proposed *amicus curiae* brief and certification of reproduced signature for the certification of Harold Lee in support of same. Please charge any fees associated with this filing to our firm's JACS Account, 144908.

Thank you for your courtesies in this regard.

Respectfully,



Thomas O. Johnston

Cc: David G. Sciarra, Esq. (via FedEx)  
Lauren Jensen, Esq. (via FedEx)

**JOHNSTON LAW FIRM LLC**

Thomas O. Johnston, Esq. (Id: 040061998)  
151 Forest Street, Suite A  
Montclair, NJ 07042  
(Tel) 973-447-4610  
Attorneys for Movant,  
New Jersey Charter Schools Association, Inc.

RAYMOND ARTHUR ABBOTT; et al.,

Plaintiffs,

v.

FRED G BURKE; et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 083626  
RELATED SC CASE NO.: 42,170

CIVIL ACTION

**NOTICE OF MOTION FOR LEAVE  
TO APPEAR AS AMICUS CURIAE**

TO: Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

**Attorneys for Plaintiffs:**

David G. Sciarra, Esq.  
EDUCATION LAW CENTER  
60 Park Place  
Suite 300  
Newark, NJ 07102

**Attorney for Respondents:**

Jennifer Hoff, Esq.  
Deputy Attorney General  
Division of Law  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

**PLEASE TAKE NOTICE** that the New Jersey Charter Schools  
Association, Inc. ("NJCSA"), by and through its attorneys,

Johnston Law Firm LLC, hereby moves before the Supreme Court of New Jersey, located in Trenton, New Jersey, for an Order granting the NJCSA leave to appear as *amicus curiae* in this proceeding pursuant to R. 1:13-9.

**PLEASE TAKE FURTHER NOTICE** that in support of this motion, NJCSA shall rely upon movant's Notice of Motion, Letter Brief, proposed Amicus Curiae brief and certification of Harold Lee.

**JOHNSTON LAW FIRM LLC**  
Attorneys for Movant,  
New Jersey Charter Schools  
Association, Inc.

By: 

Thomas O. Johnston

Dated: February 10, 2020



## EXHIBIT B

SUPREME COURT OF NEW JERSEY  
M-836 September Term 2019  
083626

Raymond Arthur Abbott, et al.,

Plaintiffs-Respondents,

v.

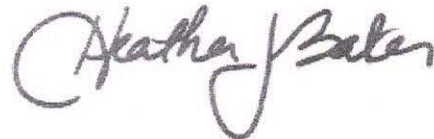
O R D E R

Fred G. Burke, et al.,

Defendants-Respondents.

It is ORDERED that the motion of the New Jersey Charter Schools Association, Inc. for leave to appear as amicus curiae is dismissed as moot.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this  
1st day of April, 2020.

A handwritten signature in dark ink, appearing to read "Heather J. Bates". The signature is fluid and cursive, with a large initial "H" and "B".

CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY  
M-832 September Term 2019  
083626

Raymond Arthur Abbott, et al.,  
Plaintiffs-Movants,

v.

O R D E R

Fred G. Burke, et al.,  
Defendants-Respondents.

This matter having come before the Court on plaintiffs' motion in aid of litigants' rights pursuant to Rule 1:10-3 and Rule 2:8-1;

And plaintiffs having sought an Order directing defendants to comply with certain specified decisions of the Court, including Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V) and Abbott v. Burke, 164 N.J. 84 (2000) (Abbott VII);

And the Court having duly considered the submissions of the parties;

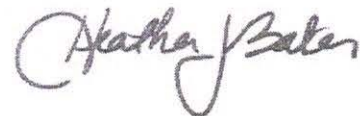
And the Court having determined that the relief sought by movants is premature in that any arguments by plaintiffs in respect of the State's compliance with relevant portions of prior decisions of the Court have to be made in the context of the Fiscal Year 2021 budget, which has not been enacted;

And the Court having declined to proceed on the assumption that respondents will fail to comply with their constitutional obligations to provide a thorough and efficient educational system pursuant to N.J. Const. art. VIII, § 4, ¶ 1;

And good cause appearing;

It is ORDERED that the motion in aid of litigants' rights is denied, without prejudice.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 1st day of April, 2020.

A handwritten signature in cursive script, appearing to read "Heather J. Bates".

CLERK OF THE SUPREME COURT



**JOHNSTON LAW FIRM LLC**

Thomas O. Johnston, Esq. (Id: 040061998)  
151 Forest Street, Suite A  
Montclair, NJ 07042  
(Tel) 973-447-4610  
Attorneys for Movant Amicus Curiae,  
New Jersey Public Charter Schools Association, Inc.

RAYMOND ARTHUR BURKE; et al.,

Plaintiffs,

v.

FRED G. BURKE; et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO.: 085333  
RELATED SC CASE NO.: 42,170

CIVIL ACTION

**CERTIFICATION OF SERVICE**

I, Thomas O. Johnston, of full age, being duly sworn according to law, upon my oath depose and say as follows:

1. I am an attorney at Johnston Law Firm LLC, and am fully familiar with the facts set forth herein.
2. On December 9, 2021, I caused an original and eight (8) copies of the following documents to be forwarded via messenger on behalf of Movant New Jersey Public Charter Schools Association, Inc. ("NJPCSA") to Heather Joy Baker, Clerk, Supreme Court of New Jersey, R.J. Hughes Justice Complex, 25 W. Market Street, Trenton, NJ 08611:
  - a. Notice of motion for leave to appear as *amicus curiae*;
  - b. Letter brief in support of same;

- c. Certification of Thomas O. Johnston in support of same (with exhibits); and
- d. Certification of Harold Lee in support of same (with exhibits); and
- e. NJPCSA's proposed *amicus curiae* brief.

I further certify that I caused two (2) copies of the above-referenced documents to be forwarded via email and Federal Express to:

1. Lauren Jensen, Esq.  
Deputy Attorney General  
Division of Law  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

2. David G. Sciarra, Esq.  
EDUCATION LAW CENTER  
60 Park Place  
Suite 300  
Newark, NJ 07102

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



Thomas O. Johnston

Dated: December 9, 2021