



*State of New Jersey*

PHILIP D. MURPHY  
*Governor*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY

ANDREW J. BRUCK  
*Acting Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

MICHELLE L. MILLER  
*Director*

November 8, 2021

**VIA E-MAIL AND HAND DELIVERY**

Honorable Chief Justice Stuart Rabner  
Associate Justices of the Supreme Court  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 Market Street, P.O. Box 970  
Trenton, New Jersey 08625  
supremectbrief.mbx@njcourts.gov

Re: Raymond Abbott, et al. v. Fred G. Burke, et al.  
Docket No.: 085333

Dear Chief Justice Rabner and Associate Justices:

Please accept this letter, on behalf of the State Defendants, in response to the Court's October 7, 2021 letter directing the State Defendants to provide cost estimates for (1) the priority projects identified in the 2019 Statewide Strategic Plan (2019 Strategic Plan); and (2) the emergent projects in Schools Development Authority (SDA) districts.

**A. Priority Projects in the 2019 Statewide Strategic Plan.**

As noted in the State Defendants' briefs, the 2019 Statewide Strategic Plan (2019 Strategic Plan) identifies and prioritizes remaining school facilities needs in SDA districts utilizing the Department of Education's (DOE's) 2019 Educational Facilities Needs Assessment (EFNA). 11/8/21 Certification of Manuel Da Silva (11/8/21 Da Silva Cert.), ¶ 3; see also 3/22/21 Certification of Manuel Da Silva (3/22/21 Da Silva Cert.), ¶¶ 44-45.

In particular, the 2019 Strategic Plan identifies a total of sixteen projects for "first tranche advancement" where there is ready availability of land to address high priority needs based on



the 2019 EFNA. 11/8/21 Da Silva Cert. at ¶ 4; 3/22/21 Da Silva Cert. at ¶ 44. Eleven projects address overcrowding, and would provide new capacity of 4,579 seats and a total of 8,830 new seats in those districts; and five projects would deliver replacement facilities to address serious facilities deficiencies, providing 4,233 new seats in those districts. 11/8/21 Da Silva Cert. at ¶ 4.

In addition, the 2019 Strategic Plan identifies seven high priority districts experiencing overcrowding, which are sequenced for first tranche advancement to locate appropriate sites to deliver projects that would alleviate overcrowding. Id. at ¶ 5. Because appropriate sites need to be identified in order to advance these projects, the number of new seats and the types of projects required to address the remaining capacity needs in each of these districts has yet to be determined. Ibid.

Importantly, SDA projects are the result of a collaborative process known as "Working Group Discussions," which include input from districts and the DOE in order to conduct a holistic review of districts' facilities and their needs, and to identify projects that best address those needs. Id. at Exhibit A. In a May 28, 2021 letter to the Assembly Budget Committee, the SDA advised the Committee of a cost estimate of \$1.6 billion for the 17,000 capacity generating seats needed in SDA districts. Id. at ¶¶ 8-9, Exh. A. This estimate includes "the costs for building construction, site construction, contingency, furniture and technology fit out, and construction management costs to deliver those seats[.]" Ibid. The estimate also encompasses the eleven projects identified in 2019 Strategic Plan to address high capacity needs, including the seven districts experiencing overcrowding issues. Id. at ¶ 10, Exh. A.

The SDA's estimate goes beyond the projects identified in the 2019 Strategic Plan, and encompasses estimated costs to address the entirety of overcrowding needs across all SDA districts. Ibid. As the SDA pointed out in its May 28, 2021 correspondence, it is important to note what the SDA's cost estimate represents, and what it does not represent:

First, this estimate is based on an average square footage per student and average cost per square foot calculation in today's dollars. This estimate does not recognize additional considerations that could be effectively considered and evaluated through the Working Group activities discussed above

and which would impact overall program costs, including:

- Land acquisition/relocation, which is extremely variable per project with potentially significant cost implications[;]
- Cost Escalation over time, to reflect costs for construction at the time of project advancement[;]
- Demolition or remediation needs[;]
- Individual District Logistical factors that impact how a school project would be delivered[.]

[Id. at ¶ 11, Exh. A.]

The SDA's estimate also does not include costs to address aging or deteriorating school facilities, emergent projects, or needs of regular operating districts. Id. at ¶ 12, Exh. A.

Additionally, a cost estimate for the five replacement facilities projects identified in the 2019 Strategic Plan is \$370 million – which includes the costs for building construction, site construction, contingency, furniture and technology fit-out, and construction management costs. Id. at ¶¶ 13-14. Thus, the combined total cost estimate for delivering projects to address the entirety of the remaining capacity needs (inclusive of the eleven projects identified in the 2019 Strategic Plan to address high capacity needs and the needs of the seven districts experiencing overcrowding), as well as the costs for the five replacement facilities projects, is \$1.97 billion. Id. at ¶¶ 14-15.

#### **B. Emergent Projects in SDA Districts.**

As the SDA represented to the Assembly Budget Committee, “[a] total amount of funding necessary to fund all emergent requests that could be submitted by the SDA Districts is currently unknown.” Id. at Exh. A. Any dollar value for emergent projects in SDA districts would thus be limited, as it would be based on information submitted by districts – which can either under- or over-estimate costs for projects. However, the SDA plans to initiate a “Building Conditions Assessment Survey” across all SDA districts to accurately define, assess costs, and prioritize emergent conditions at school facilities. See id. at Exh. A.

Though the State is unable to give a meaningful estimate of the cost of currently known emergent projects, the SDA is able to begin to advance some of these projects imminently. As noted by the State in its previous submissions, the FY22 Appropriations Act includes a \$75 million direct appropriation to address emergent school facilities and capital maintenance projects. L. 2021, c. 133. Of that appropriation, \$50 million is specifically designated to address emergent projects in SDA districts. The SDA is closely collaborating with DOE on how to best allocate this appropriation.

Respectfully submitted,

ANDREW J. BRUCK  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/Christopher Weber  
Christopher Weber  
Deputy Attorney General

cc: all counsel of record (via e-mail and regular mail)