

February 19, 2020

Heather Baker, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625

Re: Abbott, et al., v. Burke, et al.
Docket No. 083626

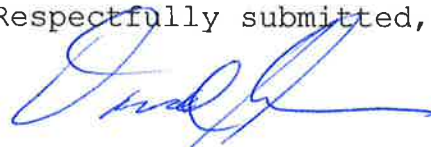
Dear Ms. Baker:

Please accept for filing the original and 9 copies of the Plaintiffs' letter brief in Opposition to the Motions for Leave to Appear as Amicus Curiae from the New Jersey Charter Schools Association, and charter school parents: Veda Cloud, Patricia Abedrabbo, Dane Tomlin, Charlottee Tullo and Shirley Irizarry. A certificate of service is also enclosed.

Kindly return one filed copy of these documents in the self-addressed, stamped envelope provided.

Thank you for your attention to this matter.

Respectfully submitted,



David G. Sciarra, Esq.

Via overnight delivery
Encls.

cc: Lauren A. Jensen, DAG
Thomas Johnston, Esq.
David Hespe, Esq.

EDUCATION LAW CENTER
By: David G. Sciarra, Esquire
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Attorney for Plaintiffs-Movants

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs-Movants

v.

FRED G. BURKE, ET AL.,

Defendants-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET NO. 083626

CIVIL ACTION

CERTIFICATE OF SERVICE

I, DAVID G. SCIARRA, an Attorney at Law, State of New Jersey hereby certify that, on February 19, 2020, I caused to be served, by email and regular mail, two (2) copies of Plaintiffs' letter brief in Opposition to the Motions for Leave to Appear as Amicus Curiae from the New Jersey Charter Schools Association, and charter school parents: Veda Cloud, Patricia Abedrabbo, Dane Tomlin, Charlottee Tullo and Shirley Irizarry to:

Lauren A. Jensen, Deputy Attorney General
Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

Thomas O. Johnston, Esq.
Johnston Law Firm, LLC
151 Forest Street, Suite A
Montclair, NJ 07042

David C. Hesse, Esq.
Porzio, Bromberg & Newman
100 Southgate Parkway
Morristown, NJ 07962-1997

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
false, I am subject to punishment.



David G. Sciarra, Esq.

Dated: February 19, 2020

By Overnight Mail

February 19, 2020

Heather Baker, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street
CN 970
Trenton, NJ 08625

Re: Abbott, et al., v. Burke, et al.
Docket No. 083626

Dear Ms. Baker:

Please accept Plaintiffs' letter brief in opposition to the Motions to Appear as *Amicus Curiae* filed by the New Jersey Charter School Association and Veda Cloud, Patricia Abedrabbo, Dane Tomlin, Charlottee Tullo and Shirley Irizarry (hereinafter "Charter Schools") in the above matter.

LEGAL ARGUMENT

THE CHARTER SCHOOLS FAIL TO DEMONSTRATE A RELEVANT INTEREST IN THE ABBOTT FACILITIES MANDATES AT ISSUE BEFORE THE COURT AND, THEREFORE, THEIR MOTIONS TO APPEAR AS *AMICUS CURIAE* SHOULD BE DENIED

Under R. 1:13-9, leave to appear as *amicus curiae* requires the applicant to "state with specificity" the "nature of the applicant's special interest, involvement or expertise" on a pertinent issue presented in the underlying proceeding and to demonstrate that the applicant's participation "will assist" the

Court "in the resolution" of that issue. On their face, the Charter Schools' motions fail to demonstrate any specific interest relevant to the central issue before this Court, namely, the State Defendants' compliance with the Abbott facilities mandates. The motions to appear as *amicus curiae* should, therefore, be denied.

At the outset, the Abbott mandates for State remediation of "unsafe, overcrowded and inadequate facilities" at issue before this Court apply only to the poorer urban districts -- now denominated "SDA districts" -- that were the subject of the constitutional violation found in the Abbott litigation. Abbott v. Burke, 119 N.J. 287, 295 (1990) ("Abbott II") (finding violation of a constitutional thorough and efficient education only in designated poorer urban districts); Abbott v. Burke, 153 N.J. 480, 519 (1998) ("Abbott V") (directing State remediation of "school buildings in Abbott districts" found to be "crumbling and obsolescent" and in a "grave state of disrepair"); Abbott v. Burke, 164 N.J. 84, 86 (2000) ("Abbott VII") (clarifying State obligation "to provide the full cost of school construction in the Abbott districts").

Given Abbott's explicit mandate for State-funded school facilities improvements in Abbott district school buildings, the only beneficiaries of that judicial mandate are the Abbott Plaintiffs: the class of students who attend school in those

district buildings. This Court recently reaffirmed this bedrock holding in recent decisions addressing State compliance with the Abbott mandates for adequate K-12 and preschool funding. Abbott v. Burke, 199 N.J. 140, 189 (2009) ("Abbott XX") (noting issue before Court was "whether the new funding approach" in the State's School Funding Reform Act ("SFRA") provided a constitutional education "specifically to children in the thirty-one Abbott districts"); Abbott v. Burke, 206 N.J. 322, 370-71 (2011) ("Abbott XXI") (holding that judicial authority to remediate funding cuts on motion in aid of litigants' rights in Abbott litigation restricted to students "who attend schools in certain constitutionally deficient districts," i.e., poorer urban districts).

As is plainly evident, charter schools are not under the purview, control or ownership of the Abbott districts. Consequently, charter buildings cannot be the subject of the Abbott facilities mandates. The Charter Schools readily concede -- as they must -- that under the Charter School Program Act, N.J.S.A. 18A:36A-1 to 18, charter schools are governed by a "statutory structure" in which they are authorized and operate "independently of a local board of education." Brief of New Jersey Charter Association at 4 ("Charter Assn. Br."); see also N.J.S.A. 18A:36A-6 and -10 (authorizing charter schools to purchase or lease their own facilities and prohibiting a charter

school from constructing a facility "with public funds other than federal funds"). Thus, Abbott districts do not educate charter students nor are they responsible for the condition of their facilities. Simply put, charter schools are not Abbott districts nor are students attending charter schools Abbott district students, i.e., within the Abbott Plaintiff class who are the designated beneficiaries of this Court's remedial facilities mandates.¹

Further, in implementing the Abbott facilities mandates in the Education Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 to 48 ("EFCFA"), the Legislature has chosen to exclude charter schools from the State's school construction program. EFCFA explicitly defines the eligible recipients of facilities funding as a "local or regional school district," or a "county special services school district," or a "county vocational school district." N.J.S.A. 18A:7G-3. To the extent the Charter Schools may have concerns over the need for facilities funding, those concerns are clearly not relevant to

¹ The Charter Schools characterize Plaintiffs' counsel as evincing "open hostility" towards them by not pressing for charter school facilities funding through the Abbott mandates. Obviously, the bounds of counsel's representation must be circumscribed by the parameters of the certified class, namely, all students who attend school in Abbott district buildings. Further, Plaintiffs, through counsel, have "worked long and hard" in this litigation to successfully secure "measurable educational improvement" for "children in Abbott districts." Abbott v. Burke, 196 N.J. 544, 549 (2008) ("Abbott XIX").

the Abbott facilities compliance issue presently before the Court. Rather, those concerns "must be reserved for a different forum," namely, the Legislature. Abbott XXI, 206 N.J. at 367 (declining to address education policy issues "collateral" to the Abbott funding remedy at issue before the Court). If the Charter Schools wish to advance their interest in obtaining facilities funding from the State, the Legislature is the appropriate forum for asserting that interest, not this Court in the Abbott litigation.

Finally, it is well-established that an *amicus* must accept the case before the court as presented by the parties. State v. O'Driscoll, 215 N.J. at 461, 479 (2013); see also State v. Lazo, 209 N.J. 9, 25 (2012) (*amicus curiae* "cannot raise issues not raised by the parties"); State v. Gandhi, 201 N.J. 161, 191 (2010) ("[A]n *amicus* must take the case on appeal as they find it"). The Charter Schools assert the importance of their participation because "it will draw the Court's attention to the needs" of charter school students for school facilities funding that "have not previously been addressed" by this Court. Charter Assn. Br. at 4. Yet, as discussed above, this issue is plainly outside the express contours of the Abbott facilities mandates and not one that the parties have presented to the Court on Plaintiffs' pending compliance motion. There is simply no basis for entertaining the Charter Schools' attempt as *amicus curiae*

to interject into this proceeding an issue wholly irrelevant to the Abbott litigation, and one not presented by the parties, for resolution by the Court.

CONCLUSION

For the foregoing reasons, the Charter Schools' respective motions to appear as *amicus curiae* should be denied.

Respectfully submitted,



David G. Sciarra, Esq.

On the letter brief:
Elizabeth Athos, Esq.
Theresa Luhm, Esq.

Encls.

Cc: Lauren A. Jensen, DAG
David C. Hesse, Esq.
Thomas O. Johnston, Esq.