

# ELC EDUCATION LAW CENTER

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November 13, 2018

Honorable Gurbir Grewal  
Attorney General of New Jersey  
Office of the Attorney General  
Hughes Justice Complex  
P.O. Box 080  
Trenton, NJ 08625

Re: Abbott v. Burke: School Facilities

Dear Attorney General Grewal:

Education Law Center ("ELC") is counsel to the certified class of plaintiff school children in New Jersey's thirty-one poorer urban districts in the Abbott v. Burke litigation. On behalf of our clients, I write to bring to your attention unsuccessful efforts over the last two years to secure a commitment by the State defendants ("State") to update the statewide strategic plan for facilities financing and construction in the Abbott districts - now denominated "Schools Development Authority ("SDA") districts - as required by the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1 et seq., and the Abbott mandates.

In Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V") and Abbott v. Burke, 164 N.J. 84 (2000) ("Abbott VII"), the Supreme Court ordered State implementation of a program to fully finance improvement and replacement of unsafe, overcrowded and inadequate school facilities in SDA districts. To comply, the Legislature enacted EFCFA, thereby establishing the SDA and authorizing the agency to finance and construct projects in SDA districts' Long Range Facilities Plans ("LRFPS") approved by the Department of Education ("DOE").

Since 2015, ELC has repeatedly notified your Office that the SDA has committed all available construction funds and, consequently, is unable to start and complete any of the 381 facilities projects, including 200 major school renovations and 102 new school buildings, identified in the most recent LRFPS approved by DOE. In testimony before the Senate Budget Committee in May 2018, former SDA CEO Charles McKenna confirmed that the agency has no funds to undertake any new projects

identified in the DOE-approved LRFPs and will completely spend down all previously allocated funds in four to five years.

Further, we have also requested your Office take steps to ensure that the State, through the SDA, promptly prepare and update its "statewide strategic plan" designating priority projects for financing and construction based on the SDA districts' LRFPs and the DOE needs assessment of critical educational space deficiencies, as required by N.J.S.A. 18A:7G-5m(3).<sup>1</sup> In addition, we are requesting the State, as ordered by Abbott v. Burke, 185 N.J. 612 (2005) ("Abbott XIV"), supply cost estimates for the priority projects included in the statewide strategic plan. These cost estimates were not included in the SDA's 2018 annual report to the Legislature, N.J.S.A. 18A:7G-24, as mandated in Abbott XIV.

The Supreme Court has made clear that the State must regularly update its statewide strategic plan of priority projects and provide cost estimates for such projects to ensure the Abbott parties "have the requisite information to assess the progress of school facilities construction and the need for further appropriations." Abbott XIV, 185 N.J. at 615. Such information is essential for the State to fulfill its constitutional and statutory obligation for "effective managerial responsibility over school construction" in the SDA districts and to ensure that the Abbott school construction program advances in a "predicable and uniform manner." Abbott XIV, 185 N.J. at 615.

I am attaching our most recent request concerning this matter, dated July 25, 2018, for your review. ELC has had no response from your Office to date.

The State has an ongoing constitutional obligation to commence and complete construction of needed school facilities projects in SDA districts in a consistent and timely manner, as mandated by Abbott and the EFCFA. Given the urgent need for additional construction funding, it is imperative that the State

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<sup>1</sup> EFCFA requires the statewide strategic plan be updated "no less than once every five years." N.J.S.A. 18A:7G-5m(3). The plan was last updated in 2011 based on SDA districts' 2007-08 LRFPs and a DOE needs assessment completed in 2010. The State has failed to update the strategic plan even though the DOE has approved amended LRFPs within the last three to four years and conducted a new educational needs assessment in 2016.

update the statewide strategic plan and provide cost estimates for priority projects as quickly as possible to determine the need for further appropriations.

We stand ready to assist your clients in completing the requisite steps set forth above. If compliance is not forthcoming in a prompt manner, we will have no alternative but to commence appropriate proceedings before the Supreme Court to effectuate our clients' constitutional rights to buildings that are safe, not overcrowded and educationally adequate.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Sciarra".

David G. Sciarra, Esq.  
Executive Director

Cc: Michelle Miller, Assistant Attorney General  
Donna Arons, Deputy Attorney General  
Lamont Repollet, Commissioner of Education  
Matthew Platkin, Governor's Chief Counsel

July 25, 2018

Donna Arons, Deputy Attorney General  
Office of the Attorney General  
Hughes Justice Complex  
P.O. Box 080  
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Prioritization Process

Dear Deputy Attorney General Arons:

As you are aware, Education Law Center (ELC) serves as counsel to the school children in the SDA districts in the Abbott litigation. I am writing to follow-up on letters we exchanged several months ago regarding the status of the State school construction program. I am specifically seeking an update on the development of a statewide strategic capital plan.<sup>1</sup>

In your letter of October 4, 2017, you indicated that the Educational Facilities Needs Assessment and Prioritization of School Facilities Projects, completed by the Department of Education in May 2016, would “serve as a starting point for the next update to the New Jersey Schools Development Authority (SDA) capital plan.” To ELC’s knowledge, and as stated in your letter, the SDA’s capital plan has not been updated since September 2014, nearly four years ago.

I remind you that this is an urgent matter. The strategic plan is essential to guide lawmakers in determining how much new bond financing should be authorized, and SDA Director Charles McKenna’s testimony before the Senate budget committee in May 2018 confirmed that the SDA has no funds left to add additional projects to the current portfolio. Given that the most recent Educational Facilities Needs Assessment identifying critically-needed projects was completed over two years ago, there is no reason for further delay.

The State has a constitutional obligation to commence and complete construction of needed major capital and emergent repair projects in a timely manner, as ordered in

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<sup>1</sup>The Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 et seq requires the SDA to establish, in consultation with the Commissioner and SDA districts, a statewide strategic plan to be used in the sequencing of SDA district school facilities projects based upon the projects’ educational priority rankings and issues which impact the development authority’s ability to complete the projects. N.J.S.A. 18A:7G-5m(3).

in Abbott v. Burke and mandated by the EFCFA. In light of the State's exhaustion of current bonding authority, it is imperative that DOE and SDA undertake this strategic prioritization process as quickly as possible to remedy the current constitutional and statutory deficiency.

On behalf of the Abbott school children, we are ready to assist the Attorney General and the respective agencies to undertake and complete these mandated steps to secure additional funding for urgently needed projects. While we hope to work collaboratively with the new administration in implementing the Abbott facilities mandate, if a new capital plan is not forthcoming soon, you can expect that we will take legal action to enforce our clients' constitutional rights to attend school in buildings that are safe, not overcrowded and educationally adequate.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Sciarra".

David G. Sciarra, Esq.  
Executive Director

cc: Michelle Miller, Assistant Attorney General