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December 3, 2019

Cary Booker, Assistant Commissioner – Early Childhood  
New Jersey Department of Education  
100 Riverview Plaza  
P.O. Box 500  
Trenton, NJ 08625-0500

Re: Implementation of Preschool Programs by Charter Schools

Dear Assistant Commissioner Booker:

Education Law Center (“ELC”) advocates for the education rights of New Jersey’s public school children under state and federal laws, especially low-income (“at-risk”) students, students with disabilities, and English language learners. As counsel to the children in poorer urban or “Abbott” districts, we also continue to advocate for effective and timely implementation of the remedial measures ordered in the Abbott v. Burke litigation, including high-quality early education.

We are writing to bring to your immediate attention the Department of Education’s (“DOE”) recent decisions approving preschool classrooms in charter schools outside of the Abbott districts’ universal preschool program plans. As we explain, charter schools are not authorized to operate their own preschool programs and, accordingly, immediate action by your Office is required to correct this violation of law.

Our review of DOE data and documentation reveals that at least 10 charter schools are currently operating preschool classrooms in Abbott districts under separate preschool program plans approved by the DOE. For the 2019-2020 school year, these charter schools and their current preschool enrollments are:

<b>Charter School</b>	<b>City</b>	<b>Number of Children</b>
Camden’s Promise Charter	Camden	60
Golden Door Charter	Jersey City	45
Great Oaks Legacy Charter	Newark	60
John P. Holland Charter	Paterson	90
Learning Community Charter	Jersey City	45
Marion P. Thomas Charter	Newark	75
Newark Educator’s Community Charter	Newark	45
Phillip’s Academy Charter	Newark	60
University Heights Charter	Newark	120
Vineland Public Charter	Vineland	30

Thus, at least 10 charter schools in Abbott districts are now operating their own preschool classrooms enrolling approximately 630 three- and four-year old children. Further, these charter schools were provided with approximately \$8,411,730 in preschool education aid.

None of these charter schools are operating their preschool classrooms through the DOE approved district-wide preschool programs and plans in the Abbott districts in which the charters are located. Instead, the DOE has permitted them to provide preschool outside the universal preschool plans authorized by statute and regulations implementing the Supreme Court’s Abbott preschool mandate. As we explain, there is simply no legal authority for the DOE’s decisions to do so.

First, only Abbott districts are authorized to provide universal preschool to three- and four-year olds residing in their districts. In providing for preschool education aid, the School Funding Reform Act (“SFRA”) makes clear that “[d]istrict factor group A and B school districts...with a concentration of at-risk pupils equal to or greater than 40%” – i.e., Jersey City, Paterson, Newark, and other Abbott districts – “shall provide free access to full-day preschool for all three- and four-year old pupils.” N.J.S.A. 18A:7F-54(a) (emphasis added); see also N.J.A.C. 6A:13A-2.1(a) and 1.2 (defining “universal preschool”). Further, DOE regulations codifying the SFRA’s mandate for universal preschool only authorize Abbott districts to offer high-quality preschool to all three- and four-year olds through implementation of a DOE-approved “five year preschool program plan and annual updates” that meet the universal enrollment, quality standards, and other program elements set forth in the regulations. N.J.A.C. 6A:13A-3.1(b). Thus, there is no legal basis to permit charter schools or any other entity other than the districts to “implement a preschool program” serving preschool-age children in Jersey City, Paterson, Newark and other Abbott districts.

Second, while Abbott districts may offer universal preschool through a “mixed delivery system,” that system can only “include in-district, private provider, and Head Start agency program(s).” N.J.A.C. 6A:13A-3.1(c)9 and 2.1 (defining “Head Start” and “private providers”). DOE regulations also permit Head Start and private providers to participate in a district’s preschool program only through a contract with a district board of education to ensure compliance “with the school district’s program requirements, including employment of appropriately licensed and qualified teaching staff.” N.J.A.C. 6A:13A-3.1(c)9 and 2.1 (defining “preschool program contract”; see also “Public Schools that are required to use state-approved contracts for Providers and Head Start,” [www.nj.gov/education/ece/provider/memo2.docx](http://www.nj.gov/education/ece/provider/memo2.docx), September 20, 2019 (DOE memorandum requiring school districts to use standard contract)). Charter schools are clearly not either Head Start agencies or private providers within the ambit of the DOE preschool regulations. Nor is there any evidence that the charter schools providing preschool have secured contracts with the Abbott districts to serve preschool-age children through the districts’ universal, five-year plans. Instead, the DOE approved the charter schools’ applications to implement their own preschool programs outside the districts’ mixed delivery systems. There is no legal basis for the DOE’s approval of these separate and distinct charter preschool programs.

Third, the DOE’s decision to approve the charter schools’ preschool programs directly undermines the core elements of high-quality preschool established in the SFRA, the DOE’s

preschool regulations, and the Supreme Court’s preschool rulings in Abbott v. Burke. At the heart of this legal framework is the Court’s 1998 ruling requiring “Abbott districts”—and not charter schools or any other entity—to provide universal, high-quality preschool to all three- and four-year olds. Abbott v. Burke, 153 N.J. 480, 507-08 (1998). The centerpiece of the Abbott preschool mandate, as codified in the DOE regulations, is “district operation” of the program to enroll the “eligible universe” of preschool-age children in the district. N.J.A.C. 6A:13A-2.1(a) (mandating the “district board of education” provide “free access to full-day preschool for all three- and four-year old children). While districts may utilize Head Start and private providers to deliver preschool to eligible children, the district—and only the district—is responsible to ensure community-based, private providers meet “the stringent requirements” for high-quality preschool, including teacher certification, substantive education standards, and small class size, through appropriate contracts. Abbott v. Burke, 170 N.J. 537, 553 (2002). As the Supreme Court made clear, “direct district operation” of the preschool program “means district responsibility for quality and ensures accountability within the district administrative structure.” Abbott v. Burke, 163 N.J. 95, 115 (2000).

The DOE’s decision to allow charter schools to operate their own, separate preschool programs, without authorization and direct supervision from the districts, clearly undermines the Abbott districts’ responsibility under the Abbott rulings and DOE regulations to ensure all participants in their mixed delivery systems fully adhere to Abbott’s high-quality, substantive programming and fiscal standards. Further, given the overlap of children to be served, these separate charter preschool programs interfere with the districts’ legal obligation to “establish procedures for recruitment, enrollment and placement of all eligible resident preschool children in the preschool program” and make it impossible for the districts to implement “strategies to serve at least 90 percent of the universe of eligible preschool children.” N.J.A.C. 6A:13A-2.3(a). Moreover, separate charter preschool programs can impair existing district contracts with private providers and Head Start agencies that have, through those contracts, delivered high-quality early education to enable the districts to serve their universe of eligible preschool children. N.J.A.C. 6A:13A-9.1 (establishing detailed requirements for district contracts with community-based, private providers).

Finally, we are gravely concerned that the DOE, by allowing charter schools to operate separate preschool programs, is facilitating the development of a “two-tier system” of preschool that the Supreme Court made abundantly clear is “not permitted” in Abbott districts. As the Court emphasized, the Abbott-mandated program is a “quality preschool network that merges existing community day care centers and district run programs into a coherent unified system...” Abbott v. Burke, 163 N.J. 95, 119 (2000). This bedrock principle of a unified, district-run preschool program has now served generations of preschool-age children in Jersey City, Paterson, Newark and other Abbott districts, delivering the discernible benefit of “help[ing] to close the gap between home and school environments and the educational expectations that lead to academic success.” Abbott v. Burke, 153 N.J. 480, 503 (1998).

For the reasons set forth above, ELC requests that you take immediate steps to phase-out direct operation of preschool programs by charter schools in Abbott districts. We further request that you provide charter schools the option to continue providing preschool only by seeking appropriate contracts that incorporate their classrooms into the districts’ universal, five-year

preschool program plans as required by the Abbott rulings, the SFRA, and DOE regulations. Finally, we request that your Office issue guidance that clarifies that charter schools in Abbott districts are not authorized to implement, or otherwise operate, preschool programs that are separate from, and outside of, the districts' DOE-approved preschool program plan.

We stand ready to work with you to ensure full compliance with the Abbott preschool mandate, and we look forward to your prompt response to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Sciarra".

David G. Sciarra  
Executive Director

cc: Dr. Lamont Repollet, Commissioner, Department of Education  
Tonya Coston, Deputy Assistant Commissioner, Division of Early Childhood Education  
Julie Bunt, Acting Director, Office of Charter and Renaissance Schools