



## TESTIMONY OF EDUCATION LAW CENTER

Joint Committee on the Public Schools

April 26, 2024

Co-Chairs Assemblywoman Reynolds-Jackson and Senator Cryan and honorable members of the Joint Committee on the Public Schools, thank you for inviting Education Law Center (ELC) to testify at this hearing. I am Elizabeth Athos, Senior Attorney, Educational Equity, speaking today on behalf of ELC. As the representatives of the schoolchildren in the 31 SDA districts, we have a particular interest in New Jersey's school construction program. Today, I want to address the urgent need for additional construction funding and discuss several statutory reporting requirements for the program which may need your oversight to ensure timely compliance.

### School Construction Program Funding

During the past three fiscal cycles, the state has allocated \$1.75 billion to capital construction projects in the SDA districts and another \$100 million to address building maintenance issues and emergent projects. This is the first new money added to the school construction program since 2008. While we welcome the funding, the capital funds are already fully committed, and they are not sufficient to meet the capital and emergent need that exists beyond the SDA's current capital plan. Years of inadequate support for construction and maintenance have left schools in our most vulnerable and racially segregated communities in dire need of repair and replacement. According to the SDA's recently updated [Statewide Strategic Prioritization Plan](#), there is an immediate need for an additional 8,000 seats to address overcrowding and more than 50 buildings need to be renovated or replaced due to age and condition. The SDA has estimated it will cost, at minimum, an additional \$7 billion to address all the capital projects in the SDA districts.

Given the urgency of the issue, we are extremely disappointed that Governor Murphy's proposed FY25 budget includes no additional funding for capital construction and just \$50 million to address building maintenance issues in the SDA districts. As I'm sure you are aware, because of a New Jersey Supreme Court order issued in 1998, and reiterated in subsequent rulings in the Abbott v. Burke litigation, the State remains under a continuing obligation to remediate unsafe and overcrowded schools to ensure students in New Jersey's 31 SDA districts are provided a constitutionally mandated education.<sup>1</sup> Given this duty and the significant need, we urge you to work with your colleagues to include additional funding for the school construction program before the budget is finalized in June. As you may be aware, the Healthy Schools Now Coalition, a group of 126 organizations representing advocates, community groups, schools and parents, including ELC, has been advocating for a Legislative commitment of an additional \$500 million per year, starting with the FY25 budget, for the next ten years. If a general budget appropriation is not feasible, we ask that the Legislature seek other sources of funding through the Debt Defeasance and Prevention Fund or a bond authorization.

We also recommend that the Legislature allocate \$30 million to the SDA specifically to fund the Building Conditions and Assessment Survey (BCAS), first proposed by the agency in its 2019 Statewide Strategic Plan and again in 2022. Currently, there is no uniform, comprehensive information about the number and types of capital maintenance and emergent project needs in the SDA districts. Using consistent indicators, the BCAS will provide a complete body of information about building conditions and the remaining useful life of building systems in all 450 school buildings in the SDA districts. According to the SDA, the BCAS will support the development of reliable cost estimates and enable planners to identify potential emergent conditions and address similar conditions at multiple schools rather than the

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<sup>1</sup>Abbott v. Burke, 119 N.J. 287, 295 (1990) (finding violation of a constitutional thorough and efficient education in designated poorer urban districts); Abbott v. Burke, 153 N.J. 480, 519 (1998) (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) (clarifying State obligation "to provide the full cost of school construction in the Abbott districts").

current piecemeal approach. Manuel Da Silva, SDA CEO, has gone on record in the *Abbott* litigation to affirm that completion of the BCAS will enable the agency to better track and prioritize projects as well as save taxpayer dollars.

### Program Reporting Requirements

Beyond funding for the program, there are several district and agency reporting requirements mandated under the Educational Facilities Construction and Financing Act (EFCFA) that ensure the construction program continues to advance that we want to bring to your attention. First, every five years, SDA districts are required to submit comprehensive Long-Range Facilities Plans (LRFP) to the Department of Education (DOE) for approval. N.J.S.A. 18A:7G-4a. According to the information on [DOE's website](#), several SDA districts are out of compliance, including: Orange (2015), Irvington (2017), Union City (2016), Elizabeth (2019) and Gloucester (2019). DOE must ensure that districts' LRFPs are updated because the information provided about enrollment, building conditions and space deficiencies forms the basis for the statutorily required Educational Facilities Needs Assessment (EFNA) conducted by the DOE every five years. N.J.S.A. 18A:7G-5m. The EFNA is designed to highlight the most severe facilities deficiencies impacting program delivery within each district and to support the prioritization of capital projects among all SDA districts. The last EFNA was issued in 2019, so the next five-year deadline is fast approaching. Given the importance of the LRFPs and EFNA to the continued advancement of the school construction program, we ask that you exercise your oversight authority to make certain that DOE is working to ensure all SDA districts' LRFPs are updated, and that the agency is in the process of generating a new EFNA.

Along these same lines, it would be helpful to know when the SDA and DOE intend to revise the Statewide Project Prioritization Plan which they are also required to do every five years under EFCFA. N.J.S.A. 18A:7G-5m(3). The last comprehensive plan was completed in 2019. While updated enrollment information was used to make revisions to the plan in 2022 and then again in 2024, it is unclear when the agencies intend to undertake a more rigorous comprehensive review and reprioritization. The information in the Plan is essential for the Legislature and the

general public to understand which projects are prioritized and also the potential cost of the program going forward.

Improving school conditions for low-income, mostly Black and Brown students in this state is both a constitutional and moral obligation. It also just makes sense. Updated facilities are linked to better learning environments, reduced absenteeism, and improvements in student test scores. Money spent on school construction also has a significant impact on New Jersey's economy, generating thousands of jobs and hundreds of millions of dollars in tax revenue. It is an investment that pays off. New Jersey should be proud of a program that has improved school conditions for many students, but there is much more to be done. ELC stands ready to provide whatever assistance you need. Please do not hesitate to contact my colleague Sharon Kregel at [skregel@edlawcenter.org](mailto:skregel@edlawcenter.org) for additional information or to answer any questions.