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EDUCATION LAW CENTER  
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*Attorneys for Petitioners*

**STATE OF NEW JERSEY**

<p>Education Law Center, on behalf of the <i>Abbott v. Burke</i> Plaintiff schoolchildren,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>New Jersey Department of Education, Office of School Facilities,</p> <p style="text-align: center;">Respondent</p>	<p><b>BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY</b></p> <p>OAL DOCKET NO. EDU Agency Ref. No.</p> <p><b>VERIFIED PETITION</b></p>
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Petitioner Education Law Center, acting on behalf of the *Abbott v. Burke* Plaintiff schoolchildren, hereby requests the Commissioner of Education to consider a controversy that has arisen between Petitioner and Respondent, New Jersey Department of Education, Office of School Facilities, whose address is 200 Riverview Plaza, Trenton, New Jersey 08625-0500 (facsimile number 609-943-5290), pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

**PRELIMINARY STATEMENT**

1. This action concerns the failure of the DOE to ensure the submission and approval of updated long range facilities plans (LRFPs) by the 31 poorer urban or SDA districts, as required

by the Educational Facilities Construction and Financing Act (EFCFA), the DOE regulations implementing that act, and the remedial mandates in *Abbott v. Burke*. The ELC has filed this action on behalf of the *Abbott v. Burke* plaintiffs -- thousands of schoolchildren who, as a result of the DOE's inaction, continue to attend school in buildings with unsafe, unhealthy and dangerous conditions. DOE last approved LRFPs for the SDA districts well over five years ago and, in many cases, over six years ago. Updated LRFPs, with current enrollment data, building capacities, and health and safety conditions, are an essential prerequisite, mandated by the *Abbott* constitutional remedies, and statutory and regulatory provisions, for DOE to make all determinations related to the construction, renovation, or closing of schools, to appropriately assess statewide needs and establish educational priority rankings of all school facilities projects in SDA districts, and, based on those priority rankings, for the New Jersey Schools Development Authority (SDA) to establish a statewide strategic plan for use in sequencing the construction of SDA district school facilities projects.

### **PARTIES**

2. The Petitioner Education Law Center (ELC), located in Newark, New Jersey, is a non-profit legal services organization that serves as counsel in the *Abbott v. Burke* case for the plaintiff-class of school children who attend public schools and preschools in 31 poorer urban districts. ELC represents the interests of the *Abbott* plaintiffs to ensure effective and timely implementation and State compliance with the *Abbott* remedies for a constitutional education, including those for school facilities improvements, as ordered by the New Jersey Supreme Court.

3. The Respondent Office of School Facilities (OSF) of the Department of Education (DOE) is responsible for the provision of adequate school facilities to the students in the SDA, formerly "Abbott" districts. Its duties, as set forth in the EFCFA, N.J.S.A. 18A:7G-1 *et seq.*,

and DOE implementing regulations, N.J.A.C. 6A:26 et seq., include reviewing and approving LRFPs and SDA district applications for school facilities projects; assessing facility needs in SDA districts on a statewide basis; and establishing educational priority rankings of all school facilities projects in those districts. The offices of the OSF are located at 200 Riverview Plaza, Trenton, New Jersey 08625-0500.

### **FACTUAL ALLEGATIONS**

4. In 1997 the New Jersey Supreme Court was faced with “accounts of crumbling and obsolescent schools” that “inundate[d] the record.” *Abbott v. Burke*, 149 N.J. 145, 186 (1997) (*Abbott IV*). Based on voluminous evidence of “dilapidated, unsafe, and overcrowded facilities,” the Court concluded that capital deficiencies were among “the most significant problems” facing students in poor urban districts. *Id.* In so finding, the Court reaffirmed its prior holding in *Abbott v. Burke*, 119 N.J. 287, 390 (1990) (*Abbott II*), that “adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education].” *Id.* As the Court recognized, “[w]e cannot expect disadvantaged children to achieve when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them.” *Abbott IV*, 149 N.J. at 188.

5. In *Abbott v. Burke*, 153 N.J. 480 (1998) (*Abbott V*), the Court again reaffirmed that the State’s “constitutional obligation” under the “thorough and efficient clause,” N.J. Const. art. VIII, §4, includes the provision of adequate school facilities, underscoring the fact that the “grave state of disrepair” of Abbott school buildings “[has] a direct and deleterious impact on the education available to the at-risk children,” and “threatens [the students’] health and safety.” *Id.* at 519-20.

6. In *Abbott V*, based on a preliminary assessment of the facilities needs and proposals to finance repair and construction of school buildings in Abbott districts, the Court ordered the State to promptly undertake “a multi-phase implementation plan for facilities improvements” consistent with the State’s “commitment to provide facilities that are educationally adequate to permit the Abbott children” to achieve the State’s academic standards. *Abbott V*, 153 N.J. at 525. As an integral part of the multi-phase implementation plan, the Court directed the State and Abbott districts to immediately formulate a "Five-Year Facilities Management Plan" (currently known as a LRFP) for each district. 153 N.J. at 521. Using the State's time frame of January 1999 for the completion of those plans and spring 2000 for the beginning of construction, the Court specifically ordered the Commissioner "to ensure that the Plans are completed and that the deadlines are met." *Id.*

7. In 2000, the Legislature passed EFCFA, N.J.S.A. 18A:7G-1 *et seq.*, to implement the *Abbott* remedial orders related to facilities and to address the urgent facilities needs in the districts subject to those remedial orders.

8. In EFCFA, the Legislature created the Schools Construction Corporation to provide financing and undertake construction of school facilities projects approved by the DOE, through the OSF, in the 31 urban districts. In 2007, the Legislature amended EFCFA to, *inter alia*, establish the SDA to replace the SCC and to designate the 31 urban districts as SDA districts. N.J.S.A. 18A:7G-3.

9. Under the EFCFA, SDA districts must update and revise their LRFP every five years to reassess the facilities needs in their districts. The revised LRFP must be submitted to the DOE for review and approval. N.J.S.A. 18A:7G-4.

10. The LRFP must incorporate the State's facilities efficiency standards (FES). N.J.S.A. 18A:7G-4(a). The FES represent the instructional spaces, specialized instructional spaces, and administrative spaces that are educationally adequate to support the achievement of the core curriculum content standards, including the provision of *Abbott* supplemental programs and preschool. N.J.S.A. 18A:7G-4(h).

11. In addition, each LRFP must include: enrollment projections using the cohort survival methodology or other approved methodology; educational adequacy inventory of all existing school facilities in the district (including the adequacy of school facilities to educate existing and projected numbers of students with disabilities within the district); the identification of all deficiencies (including emergent health and safety concerns in the district's current inventory of school facilities); and the district's proposed plan for future construction and renovation. N.J.S.A. 18A:7G-4(e).

12. EFCFA conditions DOE approval of applications for individual school facilities projects to those contained in the districts' approved LRFP, or an approved amendment to that LRFP. N.J.S.A. 18A:7G-4(b), (c).

13. EFCFA further requires the DOE to develop "guidelines, criteria and format" for the districts' submission of the LRFP. N.J.S.A. 18A:7G-4(e). As required by the EFCFA, the DOE has adopted rules governing the districts' submission, review and approval of facilities projects, including emergent projects. N.J.A.C. 6A:26-1.1 *et seq.*

14. Following approval of the SDA districts' most recent LRFP or an amendment to the approved LRFP, the Commissioner must develop an educational facilities needs assessment for each SDA district which assessment shall be transmitted to, and used by, the SDA to initiate

planning activities on school facilities projects identified by SDA districts in the LRFPs. N.J.S.A. 18A:7G-5(m)(1).

15. Following the approval of the SDA districts' most recent LRFP or an amendment to the LRFP, the Commissioner must establish, in consultation with each SDA district, an educational priority ranking of all school facilities projects in the SDA district "based upon the commissioner's determination of critical need in accordance with priority project categories developed by the commissioner." N.J.S.A. 18A:7G-5(m)(2).

16. The Commissioner is required to transmit the educational priority ranking of facilities projects in each SDA district to the SDA for use in establishing, in consultation with the Commissioner, the SDA district and the governing body of the SDA district's municipality, a Statewide strategic plan for sequencing the construction of school facilities projects in SDA districts. N.J.S.A. 18A:7G-5(m)(3).

17. The DOE last approved LRFPs for SDA districts between May 3, 2007 and May 9, 2008. The DOE approvals are posted on its website at <http://www.state.nj.us/education/facilities/lrpf/fdl> and are summarized in the chart attached as Exhibit A.

18. On January 29, 2010, DOE's OSF notified SDA districts that the districts must revise their LRFPs "at least every five years to update enrollment projections, building capacities, and health and safety conditions." OSF further informed districts that the "five year timeline begins on the date of the final determination or amendment letter sent to each school district."

19. In early 2010, the SDA halted construction of DOE approved facilities projects in SDA districts, including emergent and capital maintenance projects, except for those already under construction or where bids for construction had been awarded.

20. In March 2011, the SDA established a Statewide strategic plan consisting of 110 major school facilities projects in SDA districts. The Statewide strategic plan did not include any capital maintenance or emergent projects. Upon information and belief, the SDA did not establish the March 2011 strategic plan in consultation with the SDA districts or the municipal governing bodies in which the SDA districts are located.

21. In March 2011, the SDA also released a "2011 Project Portfolio" listing 10 major projects in the Statewide strategic plan that SDA would "advance" to pre-development and eventual construction.

22. In March 2012, the SDA released a "2012 Project Portfolio" listing 20 major projects in the 2011 Statewide strategic plan for advancement in 2012. These projects included 8 projects addressing "high educational priority needs;" 7 projects "addressing high educational needs that require further discussion with the District;" and 5 projects that "address serious facility deficiencies."

23. On January 31, 2014, the SDA announced the addition of 5 projects to its Capital Project Portfolio under its 2011 Statewide strategic plan, including 1 project "addressing overcrowding needs" and 4 projects "addressing FES compliance needs."

24. From January 2010 until the present date, the SDA has not completed one major new school or school renovation project, except projects started before January 2010.

25. In June 2011, the DOE and SDA jointly announced the PEPP (Potential Emergent Projects Program) initiative, requesting SDA districts to submit applications for all emergent

repairs in existing school buildings. In April 2012, when DOE had failed to issue final determinations on the PEPP applications, ELC initiated an administrative proceeding before the Commissioner. Administrative Law Judge Ellen Bass issued an Initial Decision on December 13, 2012, holding that DOE failed to comply with the PEPP approval process, and ordering DOE to issue preliminary project reports (PPR), including preliminary project costs, within 30 days for each emergent project advanced to the SDA as part of PEPP. On June 13, 2013, Commissioner Cerf issued a Final Decision in which he concurred with the ALJ that DOE's "OSF fell short of its responsibility to speedily advance projects designed to remediate emergent conditions" and ordered his agency to issue all remaining PPRs by no later than August 30, 2013.

26. In June 2013, the DOE completed an educational facilities needs assessment for each SDA district, pursuant to N.J.S.A. 18A:7G-5(m)(1). On information and belief, the DOE has not made the needs assessment publicly available or shared the document with the SDA districts.

27. In June 2013, the DOE established an educational priority ranking of major school facilities projects in each SDA district pursuant to N.J.S.A. 18A:7G-5(m)(2). The educational priority ranking did not include capital maintenance or emergent projects. On information and belief, the DOE did not establish the June 2013 major project priority ranking in consultation with the SDA districts nor made the ranking publicly available or share the document, the "Educational Prioritization of School Facilities Projects for SDA Districts," with the SDA districts.



28. ELC obtained the documents, the "Educational Facilities Needs Assessment," and the "Educational Prioritization of School Facilities Projects for SDA Districts," by request under the New Jersey Open Public Records Act (OPRA).

29. On information and belief, the DOE has failed to take steps to require SDA districts to revise and update the LRFPs previously approved by DOE in 2007 and 2008, and has not otherwise required the districts to revise their LRFPs on a regular basis to reflect changing facilities conditions and project needs.

30. On information and belief, throughout 2013 and through the present, the DOE has advised SDA districts that they did not have to update their LRFPs and submit them to DOE, and has otherwise actively discouraged the SDA districts from doing so, even though the five year statutory period for the effectiveness of their LRFPs has expired. Upon information and belief, based on this advice from DOE, SDA districts have not submitted updated LRFPs to DOE for review and approval.

31. On November 25, 2013, ELC notified DOE of its failure to ensure that the LRFPs of the 31 SDA districts are up-to-date and approved. ELC has received no response to this notification. *See* Letter of November 25, 2013 from ELC to DOE, attached as Exhibit B.

32. On information and belief, the DOE completed the June 2013 educational facilities needs assessment of SDA districts based on the out-of-date LRFPs approved in 2007 and 2008.

33. On information and belief, the DOE established the June 2013 facilities project priority rankings for each SDA district without consultation with the districts and based on the out-of-date LRFPs approved in 2007 and 2008.

34. On information and belief, the DOE has transmitted the June 2013 educational facilities needs assessment and the major facilities project priority rankings for SDA districts to the SDA. ELC has no knowledge or information as to whether the SDA has revised its 2011 Statewide strategic plan based on the June 2013 needs assessment and major project priority rankings.

**Count One**

**(New Jersey Constitution)**

35. Petitioner repeats the allegations of paragraphs one through thirty-four as set forth fully herein.

36. The LRFP is the principal means by which SDA districts assess the conditions in school facilities and identify the need for emergent repairs, capital maintenance, and major new school or school renovation projects, or the need for school consolidations or closing, on a regular, continuing basis, and is an essential pre-requisite for the DOE to ensure the effective and timely implementation of the Abbott remedial orders for facilities improvements in those districts.

37. Respondent has failed to require the SDA districts to update their LRFPs since last approving those LRFPs over five years ago and has not otherwise required the districts to revise their LRFPs on a regular basis to reflect changing facilities conditions and project needs.

38. Respondent's failure to ensure that the DOE has up-to-date assessments of SDA district facilities conditions and needs through regularly revised LRFPs violates the right of SDA district school children to school facilities that are safe, not overcrowded and educationally adequate under N.J. Const. art. VIII, § 4 and the *Abbott v. Burke* remedial orders requiring the

State to finance, construct and remediate school facilities projects, including emergent projects, in a timely and effective manner.

**Count Two  
(Education Facilities Construction and Financing Act)**

39. Petitioner repeats the allegations of paragraphs one through thirty-eight as set forth fully herein.

40. Respondent's failure to ensure that the LRFPs of the SDA districts are up-to-date and approved violates the EFCFA, N.J.S.A. 18A:7G-4, which requires Respondent to, at a minimum, require SDA districts to submit for prompt review and approval revised LRFPs that reflect current facilities conditions and project needs.

41. Respondent's failure to complete and transmit to SDA a facilities needs assessment of SDA districts based on up-to-date LRFPs violates EFCFA, N.J.S.A. 18A:7G-5(m)(1).

42. Respondent's failure to establish, in consultation with SDA districts, an priority ranking of all school facilities projects in SDA districts, including capital maintenance and emergent projects, based on up-to-date LRFPs, and to transmit to SDA a properly developed and complete project priority ranking utilizing needs assessments reflecting current conditions, violates EFCFA, N.J.S.A. 18A:7G-5(m)(2).

**Count Three  
(DOE Implementing Regulations)**

43. Petitioner repeats the allegations of paragraphs one through forty-two as set forth fully herein.

44. Respondent's failure to ensure that the LRFPs of the SDA districts are up-to-date and approved violates DOE regulations, N.J.A.C 6A:26-2.1, which requires Respondent to, at a

minimum, require SDA districts to submit for prompt review and approval revised LRFPs that reflect current facilities conditions and project needs.

45. Respondent's failure to develop and transmit to SDA a facilities needs assessment for each SDA district based on up-to-date LRFPs violates N.J.A.C 6A:26-3.9(a)(1)-(2).

46. Respondent's failure to establish, in consultation with SDA districts, an educational priority ranking of all school facilities projects in SDA districts, including capital maintenance and emergent projects, based on up-to-date LRFPs and in consultation with SDA districts violates N.J.A.C. 6A:26-3.9(a)(3).

**Count Four  
(Agency Inaction)**

47. Petitioner repeats the allegations of paragraphs one through forty-six as set forth fully herein.

48. The Respondent's failure to ensure that the LRFPs of the SDA districts are up-to-date and approved; that the needs assessments of facilities in SDA districts are developed based on up-to-date LRFPs; that the educational priority rankings of all projects are established based on up-to-date LRFPs and in consultation with SDA districts constitutes agency inaction that is arbitrary, capricious, and patently unreasonable, particularly in light of the fundamental right of *Abbott* Plaintiffs to be educated in buildings that are safe, not overcrowded and educationally adequate.

**WHEREFORE**, Petitioner demands the following relief:

A. A Declaratory Ruling that Respondent has violated Petitioner's rights as set forth above;

B. An Order requiring Respondent to:

1. Direct SDA districts to submit revised and updated LRFPs no later than 60 days from issuance of the Order;

2. Review and approve the revised and updated LRFPs of each SDA district no later than 90 days from the date of district's submission of the revised LRFP;

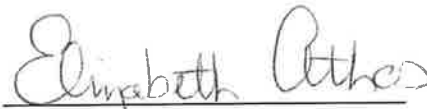
3. Develop and complete a facilities needs assessment for each SDA district based on the updated and approved LRFPs and transmit the facilities needs assessment to the SDA within 60 days from the date of approval of the SDA districts' updated LRFPs;

4. Establish, in consultation with the SDA districts, an educational priority ranking for all facilities projects, including capital maintenance and emergent projects, for each district and transmit the project priority rankings to SDA within 30 days from the date of completion of the facilities needs assessment for SDA districts .

C. An Order preserving Petitioner's claims for attorney's fees for violations of constitutional and statutory rights, enforceable under N.J.S.A. 10:6-2; and

D. Such other relief as is equitable and just.

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*Attorneys for Petitioners*

**VERIFICATION**

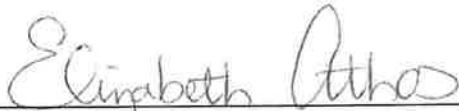
David G. Sciarra, of full age, being duly sworn upon his oath according to law deposes and says:

1. I am a petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.



David G. Sciarra

Sworn and subscribed to before me this  
6<sup>th</sup> day of February, 2014



Elizabeth Athos  
Attorney at Law  
State of New Jersey

<b>Overdue LRFPs for SDA Districts</b>			
<b>District</b>	<b>County</b>	<b>Last LRFP Approval Date</b>	<b>New LRFP Due Date</b>
Neptune Township	Monmouth	May 3, 2007	May 3, 2012
Passaic City	Passaic	June 15, 2007	June 15, 2012
Pemberton Township	Burlington	June 18, 2007	June 18, 2012
Bridgeton	Cumberland	June 20, 2007	June 20, 2012
Elizabeth	Union	September 12, 2007	September 12, 2012
Gloucester City	Camden	September 12, 2007	September 12, 2012
Harrison	Hudson	September 12, 2007	September 12, 2012
Keansburg	Monmouth	September 12, 2007	September 12, 2012
Millville City	Cumberland	September 12, 2007	September 12, 2012
Newark	Essex	September 12, 2007	September 12, 2012
New Brunswick	Middlesex	September 12, 2007	September 12, 2012
Paterson	Passaic	September 12, 2007	September 12, 2012
Perth Amboy	Middlesex	September 12, 2007	September 12, 2012
Phillipsburg	Warren	September 12, 2007	September 12, 2012
Salem City	Salem	September 12, 2007	September 12, 2012
Trenton	Mercer	September 12, 2007	September 12, 2012
West New York	Hudson	September 12, 2007	September 12, 2012
Long Branch	Monmouth	October 16, 2007	October 16, 2012
Pleasantville	Atlantic	October 16, 2007	October 16, 2012
Jersey City	Hudson	November 13, 2007	November 13, 2012
East Orange	Essex	December 14, 2007	December 14, 2012
Vineland City	Cumberland	December 3, 2007	December 3, 2012
Camden City	Camden	January 15, 2008	January 15, 2013
Plainfield	Union	January 22, 2008	January 22, 2013
Burlington City	Burlington	February 11, 2008	February 11, 2013
City of Orange	Essex	March 25, 2008	March 25, 2013
Hoboken	Hudson	March 25, 2008	March 25, 2013
Union City	Hudson	March 25, 2008	March 25, 2013
Asbury Park	Monmouth	April 10, 2008	April 10, 2013
Garfield	Bergen	May 9, 2008	May 9, 2013
Irvington Township	Essex	May 9, 2008	May 9, 2013

Source: New Jersey Department of Education website

<http://www.state.nj.us/education/facilities/lrfp/fdl>

last viewed February 6, 2013

# ELC EDUCATION LAW CENTER

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November 25, 2013

Commissioner Christopher Cerf  
New Jersey Department of Education  
P.O. Box 500  
Trenton, NJ 08625

Director Bernie Piaia  
Office of School Facilities  
New Jersey Department of Education  
P.O. Box 500  
Trenton, NJ 08625

Re: Overdue Long Range Facilities Plans of SDA Districts

Dear Commissioner Cerf and Director Piaia:

I write to bring to your immediate attention the urgent need for the Department of Education to ensure that the Long Range Facilities Plans (LRFP) of the 31 SDA districts are up-to-date and approved.

Under the Educational Facilities Construction and Financing Act (EFCFA), school district LRFPs are required to be revised and updated every five years from the date of the preceding approval. N.J.S.A. 18A:7G-4(a). Based on information obtained from the Department's website, compiled into the enclosed chart by Education Law Center ("ELC"), it has been well over five years since the 31 SDA districts had their LRFPs approved; indeed, for two-thirds of those districts, their last LRFP approval is more than six years old. See enclosed Chart of Overdue LRFPs for SDA Districts.

As you know, many existing SDA school buildings have serious health and safety conditions, are overcrowded, and have other deficiencies which impact the learning environment for the public school children who attend those schools. The LRFP is the central mechanism for each district to assess and determine the need for school facilities improvements, as well as to secure emergent repairs, capital maintenance and major school construction projects from the DOE and the Schools Development Authority. See, e.g., N.J.S.A. 18A:7G-4 and -5(conditioning

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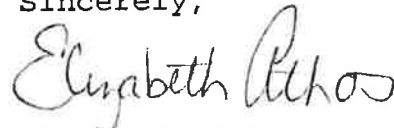
approval of any school facilities project for financing and construction on its consistency with district's LRFP).

It is critical, therefore, that the Department promptly ensure that each SDA district's LRFP is revised to establish a current roadmap for remediation of the many serious school facilities deficiencies that remain in the SDA districts. New Jersey is far from assuring that all of its students attend schools that are free from health and safety defects, not overcrowded, and educationally adequate, as the Supreme Court has mandated in Abbott v. Burke, and updating of the LRFPs is an essential step towards achieving that goal.

On behalf of the Abbott v. Burke plaintiff school children, we ask that the Department take immediate steps to ensure the submission and approval of revised LRFPs for all of the SDA districts as quickly as possible.

We stand ready to work with you to address this urgent matter and are available at any time to discuss further. We trust that you appreciate the urgency required to address deplorable conditions of numerous schools in our State's poor urban districts, and look forward to your cooperation and prompt response. Please contact me at your earliest opportunity at 973-624-1815, ext. 20 or at [eathos@edlawcenter.org](mailto:eathos@edlawcenter.org) to discuss the status of each district's revised LRFP and how Education Law Center can assist.

Sincerely,



Elizabeth Athos  
Senior Attorney

Via facsimile transmission and regular mail

cc: Michael C. Walters, AAG  
Healthy Schools Now Coalition

<b>Overdue LRFPs for SDA Districts</b>			
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Garfield	Bergen	May 9, 2008	May 9, 2013
Irvington Township	Essex	May 9, 2008	May 9, 2013

Source: New Jersey Department of Education website  
<http://www.state.nj.us/education/facilities/lrfp/fdl>  
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