

BREAKING GROUND:

Rebuilding New Jersey's Urban Schools

The Abbott School Construction Program

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The Abbott School Construction Program

The rulings of the New Jersey Supreme Court in the *Abbott v. Burke* case have launched one of our nation's most ambitious and far reaching efforts to improve public education for poor children and children of color. The rulings cover 30 low wealth urban school districts, some of which, like Camden and Newark, are among the poorest in the United States. To ensure the children in these schools a "thorough and efficient" education, as required by the New Jersey Constitution, the Abbott rulings direct implementation of a comprehensive set of improvements, including adequate K-12 foundational funding, universal preschool for all three and four-year old children, supplemental or at risk programs and funding, and school-by-school reform of curriculum and instruction.

The Abbott "remedies" also require that every school building in the Abbott districts be made safe, healthy, and educationally adequate. To ensure fulfillment of this mandate, the Supreme Court in 1998 directed the State of New Jersey to fully fund and manage all of the needed facilities improvements in these districts.¹ For the first time in its history, the State assumed direct responsibility for the physical condition and educational adequacy of local preschool, primary and secondary school facilities. By court order, New Jersey has undertaken one of the nation's largest and most comprehensive programs of school construction.

In addition, New Jersey is the first to require that all schools built by the State be "high performance" facilities.² The issue of how schools are built has gained national prominence as educators learn that facilities directly affect student achievement and teaching quality.³ Research confirms that students learn best in an environment that is healthy, comfortable, naturally lit, clean, and in good repair.⁴

¹ 153 N.J. 480(1998). More information on the *Abbott v. Burke* decisions and the current status of the Abbott School Construction Program is available on ELC's website, www.edlawcenter.org

² <http://www.state.nj.us/infobank/circular/eom24.htm> and Appendix 3

³ "High Performance School Buildings for All Children: A Declaration and Call to Action" <http://www.21csf.org/csf-home/declaration/default.asp> This Declaration and Call to Action was developed by the Wingspread Symposium Steering Committee on Healthy Schools by Design for the Funders' Forum on Environment and Education (F2E2), and by the Building Educational Success Together (BEST) partners of the 21st Century School Fund. ELC is a member of the BEST coalition.

⁴ "Do School Facilities Affect Academic Outcomes?", Mark Schneider, National Clearinghouse for Educational Facilities, <http://www.edfacilities.org/pubs/outcomes.pdf>

As more money is spent on school construction and renovation in this country than ever before, stakeholders are increasingly aware of the unprecedented window of opportunity to design and build schools that better support teaching and learning patterns. The development of high performance school buildings – buildings that are educationally adequate, community centered, healthy and safe, cost effective, and sustainable – further this goal.⁵

As states across the country increasingly assume responsibility over K-12 curriculum content standards and student performance assessments, partly in response to the federal No Child Left Behind Act, and as the drive to provide full-day kindergarten and preschool accelerates, states are also under growing pressure to oversee and support the planning, financing and construction of school facilities capable of delivering high quality standards-based education and preschool programs. New Jersey’s experience with assuming direct responsibility for school facilities financing, planning, design and construction in thirty urban communities offers a unique opportunity to inform the national debate over the proper role of the state in ensuring that all students have the opportunity to learn in a physical environment that is safe, healthy and educationally adequate.

This report will present a brief history of the Abbott School Construction Program, describe the implementation to date, lay out some current challenges, and outline lessons learned from the process so far — what we think we now know about how such an initiative *should* be planned and carried out. The report is intended to illuminate the complex process of facilities planning, design and construction, and to assist policy-makers and advocates, in New Jersey and elsewhere, in the effort to renovate and construct schools that meet the needs of students and educators, and the communities they serve. *(See the current “Abbott School Construction Program” flowchart on page 37 for assistance in following the legal, policy and organizational developments discussed in this report.)*

Background

■ A. Court Rulings

In its landmark 1990 ruling (Abbott II), the NJ Supreme Court concluded that school facilities in the State’s urban or “Abbott” districts were unsafe, overcrowded

⁵ The word "sustainable" is often interchanged with the term "green building". These terms refer to structures that are designed, built and operated to minimize their impact on the global environment while at the same time providing a better indoor environment.

and not suitable for providing the breadth and depth of curriculum typically offered in high wealth suburban districts.⁶ The Court also concluded, and reaffirmed in several later rulings, that a “thorough and efficient” education under the state constitution requires “adequate school facilities.” Further, according to the Court, the State has a direct and primary obligation to ensure the provision of adequate facilities in local school districts, particularly in the urban districts where “deplorable” physical conditions “prevent” students from receiving a thorough and efficient education and where low-property wealth impedes local bond financing of needed construction.

From 1990 through 1997, the State took little action to address the “deplorable” conditions in urban school facilities, as found in Abbott II. Frustrated by this lack of action, the Court in the 1997 Abbott IV ruling, directed the New Jersey Department of Education (NJDOE) to conduct a complete needs assessment of the deficiencies in the Abbott school facilities, and to propose a plan to address those needs.⁷ The results of the NJDOE assessment and recommendations were presented to a Superior Court

Judge appointed by the Court to conduct a special remedial hearing.⁸ Following hearings in late 1997, the Judge issued a report to the Supreme Court accepting the NJDOE’s recommendations for a state program to manage and finance the improvements necessary to ameliorate identified problems in the school buildings.

“It is undisputed that the school buildings in Abbott districts are crumbling and obsolescent and that this grave state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety.”

ABBOTT V. BURKE, 1998

⁶ 119 N.J. 287, 575 A.2d 359 (1990)

⁷ 149 N.J. 145, 693 A.2d 417 (1997)

⁸ “A Study of School Facilities and Recommendations for Abbott Districts: New Jersey Department of Education, 1997” <http://www.edlawcenter.org/ELCPublic/AbbottSchoolFacilities/FacilitiesPages/FacilitiesResources.htm>

In its 1998 Abbott V ruling, the Supreme Court accepted the recommendations that now form the foundation of the Abbott School Construction Program directing that:

- ***Long range plans be developed by each Abbott district;***
- ***All health and safety problems be remediated immediately;***
- ***Legislation be enacted to establish the state program and develop the necessary funding mechanism; and***
- ***“Shovels in the ground” by the Spring of 2000.⁹***

(For key components of the program, see Appendix I)

■ ***B. Program Implementation 1998-1999***

As required by Abbott V, in 1998, the NJDOE prepared guidelines for Abbott districts to complete Five-year Facilities Management Plans.¹⁰ The five year plans were later renamed Long Range Facilities Plans (LRFP's).¹¹ This process represented the first comprehensive effort by the State to assess the condition of local school facilities against uniform health, safety and educational adequacy standards, and to develop district-wide plans to address the facility deficiencies, both physical and educational, identified through the assessments.

Unfortunately, the LRFP process was beset with numerous problems. To begin with, districts were only given four months, later extended to six months, to complete their LRFPs. Districts had to rush through the process of hiring experts for the detailed physical assessments of school buildings; they did not have time to bring in curriculum experts or to involve significant segments of the district staff; and a major portion of the total \$5 million spent went to addressing problems with data input and on-going troubles with the software system developed by NJDOE.¹²

⁹ 153 N.J. 480, 710 A.2d 450 (1998) includes recommendations from Superior Court Judge Michael Patrick King.

¹⁰ “Facilities Management Planning Guidelines” issued September 22, 1998.
http://www.edlawcenter.org/ELCPublic/AbbottSchoolFacilities/FacilitiesPages/Fac_Mgt_Guidelines.pdf

¹¹ Facilities Management Plans (FMPs) were renamed Long Range Facilities Plans when the Education Facilities Construction and Financing Act (EFCFA) was passed by the legislature in 2000.

¹² The software problems for the Abbott LRFPs were so severe that many architects hired by the districts resorted to creating their own summary tables. Some of the data were never entered into the database. In fact, one of the larger districts never entered any data. The promise that the system would “extend beyond the initial development of the plans to track progress towards completion of the projects and to effectively manage the renewed Abbott facilities” never materialized and the system is down at this time.

Most districts also lacked in-house capacity to undertake a comprehensive assessment of their educational programs or to develop a vision for future programs. They did not have the necessary specialized knowledge of the relationship between facilities and curricular needs, nor did the NJDOE provide any support or guidance to the districts as they undertook the task. Further, staff of the Division of Facilities in the NJDOE lacked specific training on facilities and curriculum. Therefore, the educational program summaries submitted were reviewed by NJDOE staffers who lacked the necessary expertise to conduct a meaningful review.¹³

A further complication of the LRFP process was the use of NJDOE mandated facilities efficiency standards (FES), also called “models.”¹⁴ Developed by non-educators and born out of cost efficiency goals, the FES were a more detailed and restrictive version of the “adequacy standards” presented to the Court in the Abbott V proceedings by the Commissioner. The FES assign a square footage amount per student, based on grade level for elementary, middle, and high schools. In addition, the FES lay out a suggested school size, the number of classrooms, support areas, and administrative offices, (with the square footage of each), for elementary, middle, and high schools.¹⁵ Although NJDOE asserted that these school models reflect the spaces necessary to carry out the State’s Core Curriculum Content Standards¹⁶ (CCCS), and were, therefore, synonymous with educational adequacy, this correlation was neither demonstrated by NJDOE nor accepted by the Supreme Court in Abbott V.

These rigid and conventional standards presented an obstacle to planning schools that more closely reflect 21st century teaching and learning patterns. Unfortunately, the FES ultimately became an impediment to thorough review, assessment, and planning for facilities tied to district programs.¹⁷ Not only did this flout the Court’s mandate that long range plans serve the purpose of comprehensive planning for educational adequacy; it also wasted the unprecedented opportunity to

¹³ *By choosing not to include the educational summary as an element of the NJDOE web-based software, the NJDOE effectively sent the signal, whether intentional or not, that the linkage of curriculum and educational programs to facilities planning and design was not a State priority.*

¹⁴ <http://www.state.nj.us/njded/facilities/overfaq.shtml>

¹⁵ *The FES made it nearly impossible for districts to plan for small schools. Despite overwhelming national research demonstrating the benefits of smaller schools, DOE facilities models are based upon schools of conventional sizes: a high school with enrollment of 900, a middle school of 675, and an elementary of 500 students.*

¹⁶ <http://www.state.nj.us/njded/cccs/index.html>

¹⁷ *Some administrators did not realize, nor did the State emphasize, that districts were authorized by the Abbott V ruling to obtain alternative spaces and/or additional spaces, based on a demonstration of local or “particularized” need. Fortunately, some districts – a few with the capability and ingenuity to create airtight cases for need – were able to add or eliminate spaces from the FES. Neptune Twp. is an example of a district that was able to justify a significant number of additional spaces and design buildings to meet the district’s needs.*

plan for spaces that support instructional improvement as compared to merely adapting to existing space as do most districts throughout the country.

Further, the LRFP requirements failed to emphasize the needs of the cities and local communities. The NJDOE software developed for the LRFP process did not support planning for schools as the center of their communities. In addition, the Facilities Advisory Boards, required by NJDOE's original guidelines, did not allow for much community input given that only a handful of community members were involved, and planning was well underway by the time boards were convened.

Another concern involved the lack of planning for classroom space to house preschool education in the Abbott districts. Abbott V addressed the need for pre-school facilities, requiring that adequate classrooms to house the state's youngest children be a priority.¹⁸ Since preschool students were not included in some LRFPs, there is no overall estimate of the number of classrooms needed, nor is there a clear indication of where they are needed. In addition, many Abbott districts' enrollment projections for the universe of eligible preschoolers were off the mark. In recent years, this has led to surprises as the number of parents trying to register children for preschool escalated beyond predictions. In some districts, lack of classroom space has curtailed increasing enrollments in the program.¹⁹

Finally, the LRFP process was frustrated by delays in NJDOE review and approval. Districts rushed to submit their plans, which affected the quality and scope of their work. Then, NJDOE approval of the plans was delayed until late 2000 — a full year-and-a-half after submission of the plans.

■ **C. 1999-2002**

In 1999, despite the Abbott V ruling prioritizing health and safety defects in New Jersey schools, the Legislature had yet to appropriate funds for any facilities improvement programs. Concerned about this delay and the dangers posed by some of the facilities' deficiencies, the Commissioner of Education secured over \$100 million in the state budget for top priority projects (with the total estimate for all needed health and safety improvements at \$605 million), but the money was not spent, and the remedial work did not even begin until 2001 at which time it proceeded very slowly.

¹⁸ *153 N.J. 480, 710 A.2d 450 (1998)*

¹⁹ See ELC report, "New Jersey Moves Toward Universal Preschool, But Challenges Remain," http://www.edlawcenter.org/ELCPublic/elcnews_031029_universalpreschool.htm

Shortly thereafter, in 2000, the New Jersey Legislature passed, and Governor Whitman signed the Educational Facilities Construction and Financing Act (EFCFA).²⁰ In keeping with the Court order, EFCFA made the State, and in particular, the New Jersey Economic Development Authority [EDA], responsible for fully financing and managing the Abbott school construction projects.²¹ (*For a detailed breakdown of the Act, see Appendix 2*).

After passage of the EFCFA, the NJDOE began approving the LRFPs, thus paving the way for districts to apply for approval of individual projects to be sent to EDA for predevelopment work, site acquisitions, and initial design work for school renovations and new construction.²²

Over the 18 to 24 months after assuming responsibility for the program, EDA proceeded very slowly with the design of new and renovated buildings, as well as with the long-neglected priority health and safety work. When EFCFA became law, EDA had no experience in constructing K-12 public schools, only a handful of employees, and no internal infrastructure for the job. Lacking staff, procedures and experience, the EDA was simply unable to make progress during the first two years of the program.

By summer 2002, EDA still had only a handful of new buildings under design, no sites purchased, and only 5 percent of the health and safety work completed. Shortly after taking office in January 2002, Governor James McGreevey expressed concern with this slow pace, and promised sweeping reforms of the program.²³

On July 29, 2002, Governor McGreevey signed Executive Order No. 24, establishing a separate corporate entity within the EDA, the Schools Construction Corporation (SCC), with the sole mission of building K-12 schools. The Executive Order essentially outlines a blueprint for building “high performance” buildings. It directs SCC to achieve greater efficiencies in school construction procurement and project management and to increase district involvement in project planning and implementation of efficient and innovative school designs. The Executive

²⁰ *NJ Stat. Ann. 18A:7G*

²¹ *Full state funding for the construction program was reaffirmed in the New Supreme Court’s Abbott VII (2000) ruling.*

²² *Predevelopment may include site analysis, acquisition, remediation, site development, feasibility studies, preliminary design work, acquisition and design work for temporary facilities.*

²³ <http://www.state.nj.us/infobank/circular/eom24.htm>

Order also charges the SCC with improving coordination with NJDOE, and improving collaboration among other state agencies such as the Attorney General’s Office and the Department of Community Affairs. (See Appendix 3 for more on Executive Order No. 24).

“*[S]chool facilities are public buildings, and should be designed in a manner to provide maximum access and benefit to the residents of the communities where they are situated, in order to serve as centers of community*”

EXECUTIVE ORDER NO. 24
GOVERNOR JAMES E. MCGREEVEY

In his first months as head of SCC, Director Alfred McNeill met with school districts, construction companies, architects, statewide organizations and state agencies to gain an understanding of the problems with the program, and to develop appropriate solutions. He then devised a strategic internal plan to move projects forward.²⁴ It is noteworthy that Director McNeill kept EDA’s basic design for the construction program, which entailed using large Project Management Firms (PMFs) assigned to each district to run the major operations on the local level.²⁵ This approach was developed to prevent the EDA from becoming another large state bureaucracy with hundreds of employees. Director McNeill also set a goal for SCC to

build at least 50 new schools per year, at an estimated cost of about \$1 billion annually. As of March 2004, \$2.4 billion has been borrowed. In addition, the State Treasurer locked in another \$1.7 billion at the December 31, 2002 interest rate in anticipation of continued borrowing.

²⁴ Testimony of Alfred T. McNeill to the Joint Committee on the Public Schools Subcommittee on School Facilities, October 29, 2002.

²⁵ For more on Project Management Firms, see the Lessons Learned section of this report, page 16.

■ ***D. Program Implementation as of Spring 2004***

By all accounts, under Director McNeill, SCC accomplished its overarching mission within a year — to accelerate health and safety repairs, and get “shovels in the ground” on the construction and renovation projects that had been languishing on the drawing boards since 2000. In July 2002, when the Governor authorized the creation of SCC, only 5% of the health and safety projects were complete.²⁶ By September 2003, almost all of the health and safety work was completed.²⁷ In addition, by March 2004, SCC had approximately 177 projects in Abbott districts that were in some stage of development.²⁸ Still, only one new construction project, an early childhood addition in Burlington City, is complete and occupied.²⁹

The distribution of active construction projects across the Abbott districts is very uneven — three Abbott districts have no projects under contract in any state of development, while Trenton has two in the final stages of design and eight in construction, representing 40% of their total need. Neptune Township has four in final design and four under construction, 100% of need. Elizabeth has recently managed to push a total of 20 projects, (45% of need), into the predevelopment stage. Jersey City is moving forward with 12 projects, but this represents only 20% of needed construction and renovation. Overall, 33% of planned projects in the Abbott districts are in development. However, 13 districts have less than 25% of the total planned school projects in development, while 3 districts have 75% or more of the total planned projects in development. The uneven distribution of projects demonstrates both the varying capacity of the Abbott districts, and the absence of NJDOE support for those districts that lack the expertise, leadership and/or resources to move projects forward. (*For a complete, up-to-date list of projects in development, visit ELC’s website: www.edlawcenter.org*).

Because the Abbott School Construction Program is state-run, the tendency for some of the districts is to just “take what they can get” and count their blessings. Some districts do not have the personnel or leadership capacity to oversee the critical pieces of the school construction program. They are not

²⁶ EDA Activity Report, Appendix “A”, July 19, 2002. http://www.njscc.com/general/reports/annualreport_2002.pdf

²⁷ The Schools Construction Corporation has a feature on its website listing each school in each district with proposed work, including health and safety work, and any contracts awarded. (Visit My School section of www.njscc.com)

²⁸ This means one or more of the following has occurred: contracts have been awarded for predevelopment work; DOE has approved preliminary designs; architectural contracts have been awarded, construction is out for bid; and/or a construction contract has been awarded.

²⁹ <http://www.edlawcenter.org/ELCPublic/AbbottSchoolFacilities/FacilitiesPages/Resources/NewConstructionReport.htm>

prepared to develop education program plans; evaluate a list of potential sites for schools before submission to NJDOE; design and successfully carry out a district-wide implementation of their LRFPs; plan for swing spaces and other contingencies that will inevitably occur; or to move individual projects toward approval from NJDOE. Moreover, some administrators do not fully understand that the district still plays the most critical role in achieving the goal of adequate facilities — that is, ensuring that new and renovated facilities reflect educational needs through assessment and careful planning.

Additionally, whether they do not perceive the opportunity, or do not have the ability to seize upon it, many Abbott districts fail to exert what could be meaningful influence in the architect selection process. Currently, the SCC selection criteria for architects are based on a point system with the major focus on budget, experience and scheduling, and with less emphasis on educational and community needs. Districts could exert more influence if they viewed the architect selection process as a critical step in ensuring that buildings reflect educational need.³⁰ Many districts send facilities managers or a Board member to the selection process rather than a qualified expert who is knowledgeable about the interface between facilities and educational effectiveness and the importance of linking schools to the community.

Also impeding the design process is the continued reliance on facilities efficiency standards (FES). As described earlier, these restrictive standards have been a constant point of contention between the districts and NJDOE in planning schools. Some districts have been able to hire consultants or have the capacity on their own staff to create justification for additional spaces and to justify all additional square footage by tying it to “particularized” educational needs. However, this requires very special expertise and determination to buck the bureaucratic structure now in place to review all building plans.

As some projects have begun to move forward, new problems have emerged. School siting has become a major issue, as it is in so many other urban areas around the country. In cases such as Newark, the problem is exacerbated by the city’s failure to fully cooperate with the school district to find suitable sites. Ratables (sites that yield property tax revenue), have become more attractive than school buildings to some mayors since

³⁰ According to the current architect selection criteria, team experience, appropriateness of staffing and project experience are worth some 55 out of 100 points. Schedule and budget issues are worth another 20 points. That leaves five points to assess the firm’s understanding of the purpose of the project and 20 points to assess the firm’s approach to the project.

schools bring in no revenue. Newark selected a comprehensive list of sites in their initial plan, but the city has not hesitated to sell the sites off to developers. In some cases, the developer actually intends to build something. In other cases, they demand huge prices to sell the land for a school. This is also happening in other districts around the state, especially where there is no updated city master plan.

Furthermore, the adequacy of facilities for the state's three and four year olds remains a serious problem.³¹ At present, about 70% of all Abbott preschool programs are offered through off-site community providers under contract with the districts. Sixty percent of these community providers operate out of leased buildings. But, the majority of these buildings have not been assessed by the districts or by the NJDOE to determine if the space available is adequate to house a quality preschool program.³² Under ECFCA, one or more preschool providers may be included in the district's LRFPs to upgrade the buildings, but many districts have opted not to include them. The issue of funding has been a major stumbling block to the willingness of the Abbott districts to include providers in their facilities plans. It is generally understood that funding levels approved for Abbott facilities may not be adequate to meet needs and superintendents and boards are worried that the district's K-12 classrooms may never be built if money is siphoned off for preschool community providers' buildings, which the district neither owns nor operates.³³ This leaves providers in limbo, unable to upgrade their buildings, and leaves the children housed in potentially unsuitable classrooms.

As for community input, although the 1999 district wide LRFP process required some local involvement through a Facilities Advisory Board, the lack of community input into the school project planning stage has caused considerable unrest in several Abbott districts. Some local communities have begun demanding input into construction projects from the very beginning of the process, and some districts have responded by becoming more inclusive. However, there are currently no regulations in place requiring districts to include community input, despite Executive Order No. 24 and its call for "community centered" schools.

³¹ See ELC report, "Abbott Preschool Program Fifth Year Report on Enrollment and Budget," <http://www.edlawcenter.org/ELCPublic/Publications/PDF/PreschoolFifthYearReport.pdf>

³² "Preschool Teaching and Learning Expectations: Standards of Quality" NJ Admin.Code 6A:10A-2.2(a) (2003).

³³ See ELC press release, "NJDOE Rules Neglect Preschool Facilities Needs," http://www.edlawcenter.org/ELCPublic/elcnews_040109_PreschoolFacilitiesStory.htm

The Short Term: Needed Program Improvements

Despite shortcomings in the initial stages of the program, some progress has been made. Still, much remains to be done before all Abbott schools can be considered healthy, safe and educationally adequate, as the Court ordered. Relatively strong leadership in some Abbott districts and the establishment of the SCC has propelled the process forward, but at an uneven rate among the districts. Lack of assistance from the State and bureaucratic obstacles continue to impede progress in some areas. Without some fundamental changes, with particular focus on the initial stages of the process, the school construction program is bound to repeat many of its past mistakes. Several problems require urgent attention.

■ *A. New Long Range Facilities Plans*

The 2004-2005 school year marks the end of the first five years of implementation of the Abbott school construction and preschool programs. EFCFA requires the Abbott districts to “prepare and submit” to NJDOE new long-range school facilities plans by October 2005. These new LRFPs will replace the current (1999-2004) plans, providing the blueprint for each district’s school construction program for the next five-year construction cycle, or through 2010.

EFCFA also requires the NJDOE to establish, by regulation, the “guidelines, criteria and format” for the district LRFPs.³⁴ In anticipation of this statutory deadline, the NJDOE has proposed regulations to govern the LRFP process.³⁵ ELC and other groups are actively working to encourage the NJDOE to supplement these regulations with more comprehensive requirements to remedy some of the failings of the first round of planning.³⁶ The proposed new regulations currently require no assessment of the educational program or anticipated future programs, the FES remain in place as presently constituted, and there is still no requirement for community or stakeholder involvement. Moreover, the proposed

³⁴ NJ Stat. Ann. 18A:7G-4 and 26

³⁵ Proposed NJ Admin. Code 6A:26. See <http://www.nj.gov/njded/code/title6a/chap26/amendment2/>

³⁶ A report outlining these recommendations, “The Abbott School Construction Program: Report on the NJ Department of Education Proposed Regulations on Long-Range Facilities Plans” is available at http://www.edlawcenter.org/ELCPublic/elcnews_040109_PreschoolFacilitiesStory.htm

regulations provide no framework for reporting district LRFP input to NJDOE. These are serious shortcomings. If they go unaddressed, many failures of the first round of planning are bound to recur.

■ ***B. Preschool Facilities Planning***

For the first time since 1999, the NJDOE has proposed regulations to address the absence of comprehensive facilities planning for preschool programs. Separate facilities planning standards specifically linked to the requirements for teaching and learning in preschool programs are included in the regulations. However, they only apply to plans for new construction included in a district's LRFP. The great majority of preschool community providers are not eligible for any facility upgrades which means the majority of Abbott preschoolers will remain in buildings that are not able to support program standards.

■ ***C. Ensuring Adequate Preschool Facilities***

Neither SCC nor NJDOE regulations currently require that preschool community providers' buildings be assessed or upgraded on the basis of programmatic standards. This is a complicated and difficult problem that must be addressed through discussions with all stakeholders because every three and four year old student has a right to attend classes in buildings that are healthy, safe, and educationally adequate. As things stand now, the majority of preschoolers attend programs in provider buildings, the conditions of which vary greatly.

The implementation of the preschool programs will be seriously jeopardized if providers' facilities are not included in the districts' overall planning process. Since most of the Abbott districts contract with providers, the classroom space they use is critical to the success of the districts' programs. Neighborhood centers and Head Start programs have stepped up to help meet the increased demand for preschool; yet they are denied state support to provide the court-mandated, high quality buildings that children need to succeed in school.³⁷ Some of these providers' buildings will have to be included in the district's LRFP in order to have adequate quality spaces for young children.

³⁷ Section 5s in EFCFA (<http://www.state.nj.us/njded/facilities/chap72.pdf>) is limited to new construction and renovation projects for early childhood providers that own and operate a facility. But, it is the opinion of the Education Law Center that there is nothing in the act to prevent a district from including a provider that currently leases a building but that could become an owner at a later time. In fact, this is consistent with the definition of a school facility project, and is mandated by the court decision on uniform quality.

The district decision-making process for expanding preschool facilities, particularly the inclusion of providers' facilities, will remain problematic until clear guidelines that support the process are developed by the NJDOE and SCC. The state agencies responsible for preschool facilities must begin to play a more organized, pivotal role in developing preschool facilities policy, and for assessment of all buildings housing preschoolers to assure young children are taught in quality buildings.

■ ***D. Implementation of Executive Order No. 24***

Executive Order No. 24, which created the SCC to oversee the design and construction of facilities projects, also established several critical “high performance” standards for the planning of facilities. The Order directed the SCC, the NJDOE and the school districts “to incorporate community design features to maximize public access to the building and enhance the utility of the building to the needs of the community,” and to “provide opportunity for the community at large to have meaningful participation in the site selection process...and in the design of school facilities.”

In addition, the Order prohibits NJDOE from approving any school facilities project “unless the project is designed using best practices to create space that enhances the learning process and accommodates modern teaching techniques.” Finally, the Order requires NJDOE to adopt regulations that contain standards and criteria governing the use of community provider facilities to provide preschool education. Essentially, none of these criteria have been established in educational facilities regulations or guidelines by either NJDOE or SCC.

■ ***E. School Siting***

School siting is a pressing issue. The cost of land appears to be escalating every month and less and less land is available to locate schools. A more articulated state policy is needed to review the cost of land and environmental clean-up, and to clarify the relationship between cities and school districts in designating land for schools. And, districts will have to reevaluate their thinking with regard to the amount of space necessary for a school building, the size and structure of schools, the potential for conversion of other types of buildings to schools, and new, more creative ways to design buildings on small amounts of acreage.

■ ***F. Public Reporting and Transparency of Process***

NJDOE does not maintain any database on the current LRFPs, as amended since 1999. Therefore, the NJDOE cannot identify the precise number and scope of the projects in the current LRFPs, nor is it possible to ascertain how these plans have been amended. The NJDOE has attempted to develop a database of all the projects that have been submitted to SCC for development but, to date, the information is incomplete and unavailable to the public.

Further, though we stress the initial steps of the program as most important, we do not mean to suggest that other steps in the program are unimportant. SCC has some work to do throughout the process as well, particularly with respect to keeping districts and their communities “in the loop.” For example, while SCC has an operational framework, it is not transparent to “outsiders,” nor is the design standards draft available to the public. And, the SCC safety manual should be available to the public and revised to address safety, not only of workers, but also of children and staff.

“*A district may design, at its discretion, the educational and other spaces to be included within the school facilities project. The design of the project may eliminate spaces in the facilities efficiency standards, include spaces not in the facilities efficiency standards, or size spaces differently than in the facilities efficiency standards upon a demonstration of the adequacy of the school facilities project to deliver the core curriculum content standards.*”

EDUCATIONAL FACILITIES
CONSTRUCTION AND FINANCING ACT

Lessons Learned: Some essential ingredients for success

By 2005, New Jersey will have gained five years experience running the Abbott School Construction Program. Now is the time to consider the lessons learned during this time period and to incorporate the best and most current thinking on educational facilities policy and practice as the program goes forward into the second five-year planning and construction cycle (2005-2010). Most significantly, state and local policymakers and stakeholders must consider the research that has advanced our knowledge of how children learn and how their surroundings affect that learning. The upcoming LRFP process is an opportunity for New Jersey to deliberately and intelligently plan for school buildings that foster excellence in teaching and learning and that provide crucial links between schools and their communities. And, other states and districts throughout the country can benefit from New Jersey's experience as it reflects upon the program thus far and makes changes where needed.

New Jersey has undertaken an ambitious and complex school construction program which, although moving forward, needs an independent review of district successes and problems. Many repair projects are complete and more projects are under development now than was the case just two years ago. However, there is a great deal of room for improvement and in fact there are several areas where changes in the program structure and process are absolutely critical.

We don't presume to have all the answers for the State, districts and local communities, nor a foolproof prescription for how the Abbott School Construction Program should be run. However, a thoughtful review of the program's past, and a look toward its future makes at least six lessons abundantly clear:

- *A stronger policy framework for planning must be developed. It must reflect the Supreme Court decision, EFCFA, and the Governor's order for "high performance" schools with explicit standards and guidelines that articulate district and state responsibilities;*
- *The planning and design process, from start to finish, must very deliberately center around a goal of educational excellence linked to community needs and developed through input from all stakeholders;*

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- *Technical support and capacity building measures must be consistent and readily available throughout the entire process, particularly in the initial planning stages beginning with the LRFP, and through project applications and school siting to guarantee equity between districts and within districts;*
 - *Preschool facilities, both public and private, must be fully integrated into the planning and design process and reflect educational needs and priorities;*
 - *The pace of the school construction program must continue with deliberate speed to fulfill Abbott V requirements for upgrading all Abbott school facilities in need;*
 - *All steps of the Abbott School Construction Program must be transparent to any interested citizen. Public reporting of the process and progress is essential.*

■ ***A. Clear and Effective Policy Framework***

By “policy framework” we mean a clear structure of expectations — a common set of standards and guidelines for procedures, timelines, delineation of authority, agency coordination, technical support, accountability and public reporting. The Abbott School Construction Program is unprecedented in its ambition and scope. Any project of this size and complexity requires a coherent structure that a policy framework provides; in the case of this program, such guidelines and standards are essential.

The New Jersey Department of Education is a large bureaucracy, subject to all the challenges that the word “bureaucracy” brings to mind. The Abbott districts are low-wealth communities where schools and district offices are typically over-extended, with inadequate human and fiscal resources to address the needs of the children they serve. The work of this facilities improvement initiative is hard enough; amorphous expectations and ineffective communication make it more difficult and ultimately, less effective for all involved.

The following is an outline of what we deem to be some essential elements of an effective policy framework — a minimal outline of the types of guidelines and standards New Jersey, or any state undertaking such a project, should have in place.

- 1. Clear Guidelines and Standards of Procedure.** NJDOE must set clear guidelines and standards for all steps of the program including the district wide LRFP process, local planning on the project level, requirements for community input, and incorporation of the requirements of “high perform-

ance” building design. All steps must be clearly explained and reflect the Supreme Court rulings, the requirements of EFCFA, and Executive Order No. 24. A set of expectations for district input should be articulated and required.

2. Timeline and order of operations. A reasonable timeline for all processes (with the definition of “reasonable” jointly determined by the State and district representatives) is critical to accomplishing all the necessary steps in planning. A rushed and haphazard flurry of activities and assessments can’t be expected to yield a meaningful result, as we saw in New Jersey’s first planning round. Some flexibility will always be necessary in a program of this magnitude, and with so many participants. A district the size of Newark, for example, will need more time for planning than a district with only a handful of schools or a district whose program is well underway. However, all participants need a uniform map of how to proceed — a realistic, standard set of expectations regarding the amount of time available to complete each task, based upon a detailed understanding of the actual work involved in each deliverable.

In the case of the Abbott districts, it is reasonable to assume that a successful planning process, including a complete educational assessment and summary of needs with staff and community involvement, would take at least one year or more. Virtually every step in the process requires a plan of its own.

3. Qualifications and work team composition. Each step in the planning process, both on the district planning level and local project level should have expertise available to assist committees, administrators and boards of education in decision making. That means that professionals may need to be hired, district personnel brought in, key individuals within the city with various types of expertise consulted, and business persons, community leaders, and housing/development representatives invited to contribute.³⁸

The qualifications of individuals involved in decision making are particularly important in the initial steps of educational review and planning. Very few districts and schools are likely to coincidentally employ experts in facilities and instructional needs assessment *and* program development.

³⁸ *In the 1999 LRFP process, an architect and engineer were required to be part of the LRFP advisory committee.*

Defining the qualifications of participants to the process, both internal and external, assures that in the aggregate, the level of expertise on the team will be equal to the task. Very few architects have extensive experience in designing educational programs and educators usually have less experience in designing schools, but types of experts must combine their talents and work together. In too many districts, the facilities manager has expertise in neither area. An additional benefit of reviewing qualifications is that it sends the signal to all involved that the interface between facilities and instructional improvement is the top priority of the school facilities program. And, by bringing experts together with district and school personnel, the added bonus of some professional development and capacity building may also be achieved.

There is little point to defining the qualifications of those conducting the educational needs assessment and program survey if the state reviewers are not qualified to conduct an expert review of the districts' work. In New Jersey, examples abound of NJDOE facilities experts making educational decisions that are out of their area of expertise. Since the staff in the NJDOE Facilities Division are not educators, disputes are common when district personnel try to justify local programmatic needs. Therefore, qualifications of state personnel must be defined. In the interests of capacity building, the composition of the review team might be defined, as in the districts, to include both internal staff and external experts. In addition, drafters of the standards and guidelines might include an inter-district review component to allow for a more transparent process and capacity building opportunities.

4. Roles and responsibilities. Under the system created by the Abbott rulings, the school districts play a new and unique role. Though most of the processes, from start to finish, are overseen by the State, the Abbott districts no longer have to ask citizens for permission to raise local taxes for capital improvements. The downside of this system is the removal of a key incentive to convince local citizens of the project's merit. So, while the districts have less administrative responsibility overall, their role is still critical to the success of the Abbott schools construction program and their responsibility to seek and internalize community input is even greater.

Despite the relatively central role of the state in New Jersey's program, several key elements to developing the building projects still falls to the districts themselves. Whatever the districts' degree of involvement, however, consistent district leadership and tenacity to advocate for their

“*The DOE shall not approve any school facilities project for funding under the Act and the NJEDA shall not construct any project unless the project is designed using best design practices to create space that enhances the learning process and accommodates modern teaching techniques.*”

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students and community needs is essential to moving work forward. It is evident that the Abbott districts with the most projects under design have strong district leaders, work well with city officials, and have hired professionals who have pushed the process ahead by documenting every step and challenging arbitrary state decisions and delays. A cooperative but assertive approach on the part of the district appears to be a key ingredient to progress. (See Appendix 5.)

Another issue that has come to the fore in New Jersey during these early stages of the school construction program, though not addressed fully by the history above, is the problem of unclear lines of authority and contradictory statements and actions by various divisions of state agencies.³⁹ Districts and the public rightly have an expectation that state agencies like the NJDOE and SCC will develop and articulate clear policies for the

implementation of the school facilities program. Staff members of the NJDOE or SCC have a responsibility to represent the position of the agency clearly and consistently.

5. Framework for Reporting. In the first round, neither the educational program summary nor linkage to community needs was tied to the general reporting framework. The database developed for the reporting process was

³⁹ For example, three different divisions (The Division of Abbott Implementation, The Division of Finance, and The Office of Early Childhood) within the NJDOE are involved in facilities decisions, but their responsibilities remain unclear and the lack of leadership is increasingly evident. The result has been confusion and little movement in the development of policies, regulations and guidelines. Further hampering approval and oversight by these NJDOE divisions is the apparent lack of communication among the divisions themselves. For instance, at a statewide meeting, one NJDOE division representative stated that the department was recommending PreK-8 grade structure for new school buildings, while at the same time, a staff member from another division was recommending a pre-k to grade two or three structure.

only marginally adequate for the technical pieces of the plan, i.e. reporting enrollments, building deficiencies, etc. A reliable reporting mechanism and flexible format, designed to handle diverse sets of conditions and problems, is essential to planning and accountability. The system should be piloted to guarantee that districts will not spend unnecessary time and money trying to correct bugs. A web-based system might be best suited to this type of task to allow for frequent changes and updates. There must also be a framework for public reporting. The Abbott School Construction Program is a \$6 billion expenditure of public money. The State, both NJDOE and SCC, has a clear-cut responsibility to keep all citizens informed of the process and progress of the program.

■ ***B. Buildings Designed for Educational Excellence***

In order to develop high performance schools, all agencies, consultants, designers, engineers, school staff, and communities must work together from the outset with a goal of developing the best environment, both educational and physical, to serve staff, students, and community and to maximize the public investment of resources.

1. Educationally Adequate. We cannot repeat often enough that educational adequacy must be the overarching goal of the Abbott School Construction Program (or any school building project, for that matter). It must be the primary goal of the district, the NJDOE, SCC and the other agencies involved in the program. This program must result in the best possible school facilities to house the educational programs for the next 50 years. Ensuring that facilities are state of the art and reflect a deliberate and thorough assessment of educational needs must be the central goal of the planning, design and construction process, around which all other concerns revolve. The most current and best research must be evaluated to ensure that all options are explored and that decisions made are focused on guaranteeing that the buildings will promote improved educational outcomes.⁴⁰

One of the first steps toward that goal must be to define the appropriate use of Facilities Efficiency Standards (FES). As described earlier, these rigid square footage models, which the NJDOE required districts to use in the LRFP process and project development, severely limit a district's ability to plan for optimal teaching and learning spaces. The goal must be to

⁴⁰ See Appendix 8 for reference articles.

design educationally adequate facilities that are also cost efficient. This cannot be accomplished, however, by imposing an efficiency quotient on the planning and design process at the outset. A maximum square footage goal for various types of schools with some justifications for exceptions is necessary, but prescriptive requirements for types of classrooms and supporting spaces that border on design standards are problematic. School improvements and new construction are unlikely to fully comply with the educational adequacy mandate from the Court (Abbott V) or Executive Order No. 24 as long as FES occupies so prominent a position in this process.

2. Community Centered. Executive Order No. 24 calls for “community centered” schools. This means that new and renovated schools must result from an inclusive planning process that supports improved commitment to the neighborhoods where they reside and the communities they serve. These schools should also serve as a support for encouraging economic development in the local area. The Abbott School Construction Program provides the opportunity to design schools as a learning and service center for the entire community. With this enhanced initiative for revitalization, the school can become central to the community.

The involvement of community stakeholders is essential to providing a local voice and an avenue for accountability in the process. The Executive Order affirmed the importance of community centered schools and stressed the need for the participation of the local community. Without the participation of parents, elected officials, community based representatives and others; the planning process cannot be legitimized.⁴¹

Historically, one of the most effective ways of accomplishing the goal of creating community centered schools in New Jersey was the Smart Growth grant program.⁴² These grants proved to be exceptionally valuable tools in assisting recipient districts in planning their school construction programs through integration of the goals of the city, the district, and local neighborhoods. Neptune Township and Trenton are shining examples. These encouraging early results notwithstanding, the program was discontinued in 2001 despite promises to eight additional districts to fund the process. No reason was given for the program’s termination.

⁴¹ ELC has proposed guidelines to support the community input process. (See Appendix 6).

⁴² In 2000, eight districts received Smart Growth Grants from the NJ Department of Community Affairs (DCA) through the Office of State Planning. Most of these grants were for approximately \$50,000.

The McGreevey administration replaced the Smart Growth Grant program with a School Renaissance Zone Initiative, the goal of which is to leverage private sector investment to revitalize the neighborhoods surrounding new or existing school construction projects. The idea is to restore housing, recreation or community centers and encourage commercial growth in the areas around the newly constructed schools. The program's emphasis is on the coordination of state agencies rather than financial support for a community planning process.⁴³ Plans for such zones remain sketchy. There is no specific funding identified for the zones. It appears that the chosen communities have already shown great promise for revitalizing the local area and would continue in an upward direction regardless of the designation. This program may have promise, but at present, appears to be designed to further the community centered school goal without adding additional money. More information will be needed to determine whether the program will provide significant benefits to the communities chosen for the designation.

Another means by which the school construction projects can serve to boost the economy of local communities is by contracting with local builders and supporting the employment of local residents, as required by EFCFA.⁴⁴ To some extent, the State has already committed to this effort through its statewide training fund for programs to prepare minority and women residents in the Abbott communities for employment in the construction trades. In anticipation of the scale and duration of schools construction, the State has aggregated 1/2 to 1% of the total projected construction costs (up to \$30 million) to fund these programs. It is important that the programs be supported by clear guidelines regarding timing of programs, notification of potential participants, and on-going administration. If they are implemented well, these programs could provide both opportunity to local residents, and a ready supply of qualified entry-level workers for the construction projects.

⁴³ Assistance is provided through a Zone team comprised of members of state departments and agencies. In addition to the SCC, state partners include: NJ Department of Community Affairs (DCA), NJDOE, New Jersey Housing and Mortgage Finance Agency (HMFA), Department of Environmental Protection (DEP), and Department of Human Services (DHS). The collaborative effort also includes local government and school district administration, community residents and private organizations.

⁴⁴ NJ Stat. Ann. 34:1B-5.4

3. Healthy and safe, cost effective, and sustainable. NJDOE

regulations and the FES concentrate exclusively on space requirements and code. Educationally adequate schools must be planned and designed around the districts' educational programs. In addition, facilities must enhance and contribute to the learning experience by providing high levels of acoustic, thermal and visual comfort; large amounts of natural daylight; superior indoor air quality; and a safe and secure environment.⁴⁵ None of these critical issues are addressed in the current NJDOE regulations or guidelines.

A healthy school will incorporate and optimize all of the recommended areas of concern through an integrated process of design. School buildings are very complex and a laundry list of design standards will not ensure that healthy school criteria are incorporated in the most cost effective way possible. Any building program of this magnitude needs a comprehensive document to guide participants in developing healthy, safe, cost effective and sustainable schools with procedures that can be used to track and verify utilization of the recommended processes. In New Jersey, SCC has commissioned the development of such a review from the New Jersey Institute of Technology, but NJDOE must provide support for healthy schools, through regulation, from planning through completion.

■ C. District Support and Capacity Building

As described in the history above, Abbott districts vary widely in their capacity to fulfill NJDOE and SCC requirements and to meaningfully participate in the planning and design process. Even the highest capacity districts, typically those with particularly strong leadership, still struggle under the weight of the work the facilities projects entail. It is particularly crucial that NJDOE and SCC develop strong support systems for utilization by *all* of the Abbott districts — supports that are fully responsive to the particularly high needs of some of the districts.

⁴⁵ *Recommendations from Deane Evans, Center for Architectural Building Science Research, NJIT to the NJDOE's Healthy School Sub-Committee, 11/20/02. SCC recently contracted with the Center to review the development of high performance schools.*

The Project Management Firms (PMFs), assigned by SCC to support the districts, vary widely in their effectiveness and tend to focus their assistance on the latter stages of the building process. SCC must work with PMFs to ensure that districts are consulted and consistently supported every step of the way. Again, the initial steps in the school construction program are the *most* critical and assistance is often needed at the earliest stages of educational planning and in site selection. Here is where the NJDOE and the district must work for improvement.

The need for such steady and customized support is clear in New Jersey, where we see such variation in progress among the districts. Where districts lack the capacity on staff or the financial support to hire comprehensive technical assistance from qualified educational experts and planners, the state must provide and build such capacity. In New Jersey, it is the NJDOE that must assume this responsibility — to supervise district activity and take corrective action where a district is not vigorously moving forward toward school construction.

“[T]he primary purpose of these new and renovated school facilities is to serve as places of learning for children, and as such should incorporate “high performance” design features that accommodate and enhance the learning process.”

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■ ***D. Consideration of Pace and Need***

The pace of the Abbott School Construction Program in the last year has been impressive, nearly reaching the goal set by SCC Director McNeill in 2002—50 projects per year or \$1 billion of work accomplished. In order to fully implement the program as required by the Abbott decisions, this pace must continue. The Legislature set a bonding cap of \$6 billion in EFCFA that was deemed to be insufficient even at the time of the passage of the law. This cap has been

interpreted by many districts and state officials to mean that as soon as the money runs out, there will be no more. The Supreme Court ruling (Abbott V) does not impose a dollar limit on the school facilities improvement process.⁴⁶ All facilities needs in these urban districts must be met. Slowing work because of insufficient funding would be both inefficient and noncompliant with the Court's rulings.

■ ***E. Public Reporting to Monitor Progress***

The Abbott School Construction Program has an enormous impact on the education of urban children, and on the economic revitalization of high poverty neighborhoods and communities. Local stakeholders must have access to reliable and up-to-date information on the status of the LRFPs, plan amendments, project approvals, and project development in order to facilitate their active engagement in project planning and design, as required by Executive Order No. 24, and to hold local and state officials accountable for performance. It is essential that NJDOE provide projected estimates of the overall cost of the approved LRFPs and the preliminary eligible costs for project approvals. As discussed previously, the \$6 billion authorized in EFCFA to date is approximately half of what is needed to finance the current program. The public and legislators must have accurate cost estimates in order to make informed and timely decisions to increase the level of financing to implement the program, as required by Abbott V.

⁴⁶ *The EFCFA allocation of \$6 billion was less than the state's estimate of the total \$ 7.3 billion cost for the Abbott program. Since the NJDOE based the estimate on a cost of \$125 dollars per square foot (actual cost is now closer to \$200) and did not include all preschool requirements, ELC has estimated the real cost to be closer to \$12 billion. The program will require additional state allocations in the future.*

Summary

After five years, New Jersey's Abbott School Construction Program is a work in progress. There are many dedicated people deeply involved and committed to accomplishing the Supreme Court's goal of providing adequate school facilities to all urban children. There are many small success stories, many problems, and many solutions to be worked out.

No state has ever attempted to directly take on such a massive and complicated endeavor. Any process of this magnitude needs regular review and adjustment to ensure that it stays on course from both a conceptual and practical standpoint. While this is a way to maintain accountability, it is, more importantly, a way to correct problems before they render any aspect of the process hopelessly ineffective. It is a growing process and, we sincerely hope, a learning process. Every school upgraded or built should be better than the previous one. And, every school should contribute to the educational success of its students.

In this report, we only addressed some of the concerns around the beginning stages of the Abbott School Construction Program. New questions arise everyday and will continue to arise as the program grows. Only a small percentage of the proposed projects are under construction and we will continue to track the progress and the outcomes. We have not even begun to assess the educational adequacy or the quality of the new and renovated buildings, the designs of the buildings, the costs, or the effects of the Executive Order for high performance schools. We are just beginning to evaluate how and at what point the community stakeholders were involved. And, someday soon, we will be able to review the result of post occupancy evaluations.

Appendices

Appendix 1

Key Components of the Court-ordered Abbott School Construction Program

1. All health and safety deficiencies must be the first area “remediated in the necessary phased-in facilities improvement program,” since they “directly affect” children presently in the schools.
2. Additional classrooms must be constructed at required student capacity – 15 for preschool; 21 for grades K-3; 23 for grades 4 and 5; and 24 for secondary school grades – to reduce current overcrowding and house any projected enrollment increases.
3. Educational adequacy standards for instructional spaces must serve only as “minimum” standards. Districts are authorized to include in their facilities plans “additional, specialized” instructional spaces and, if they can demonstrate a district-specific, or “particularized” need for such spaces, the State must approve them.
4. Districts are to complete “Five Year Management Plans,” and these plans are to “enable the State and the district to work together to determine how to make the ‘best use’ of existing space, and to make the “site-sensitive decision of whether it is more feasible to renovate an existing buildings or construct new ones.”
5. The State will fund “100% of the costs of facilities construction as contained in the approved five-year plans since, in the past, the urban districts “had a poor bond rating” and were “unable to finance needed construction.”
6. The State, through an independent authority, will serve as construction manager for all projects, undertaking directly the design and contracting of individual projects.
7. Priority will be given to constructing temporary and new classrooms to “facilitate the full implementation of early childhood programs.”
8. Legislation will be enacted to implement the State financing and construction program, and construction will begin under the program “by the spring of 2000.”

Appendix 2

The Educational Facilities Construction and Financing Act (EFCFA) of 2000

EFCFA designated the State Economic Development Authority (EDA) as the sole agency responsible for funding and managing all school construction projects. EDA was authorized to borrow, by issuing bonds, up to \$6 billion for the Abbott school districts, \$1.3 billion less than the State's estimate for the cost of the Abbott construction program. In addition, the Act made non-Abbott districts eligible to receive up to \$2.6 billion of funding for school construction. Under EDA, the State would design and build the Abbott schools and fund 100% of the allowable costs. A small segment of non-Abbott districts would fall under the umbrella of EDA oversight if they received over 55% in state aid. The remaining 500 plus districts would receive a minimum of 40% funding for approved costs and would be allowed to run their own programs.

EFCFA basically follows the Court order, but also addresses other issues beyond the minimum framework established by the order. Some of the more important components of the Act are:

- The State must fund the entire cost of repairing, renovating and constructing the new school facilities determined by the Commissioner of Education to be required to meet the “facilities efficiency standards” in the Abbott districts.
- Abbott districts must secure approval of a LRFP from the NJDOE.
- Abbott districts must secure preliminary design and cost approval of all individual projects from NJDOE
- NJDOE transmits approved individual projects to EDA for construction financing and management.
- Districts have the option of including school facilities projects proposed by non-profit providers of Abbott preschool programs in its long-range facilities plans, making the project eligible for state financing. The provider, however, must own the building where services are rendered, and be under contract to provide preschool with the district.

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- Districts can propose “demonstration projects,” a special designation that allows a district to build a school through a redevelopment agency as part of a larger city redevelopment project. The Act only authorizes six of these demonstration projects.
 - The design of school facilities by NJDOE and EDA should “incorporate maximum operating efficiencies and new technologies to advance the energy efficiency of school facilities and the efficiency of other school building systems.”
 - The district must have a maintenance plan in place upon completion of construction work.

Appendix 3

Executive Order No. 24

In addition to the directives of the order described in the Brief History section of this report, the Executive Order also outlined important objectives for school buildings that had not been part of the program in its initial phase. Among these objectives are:

- Buildings that incorporate long life cycles and reduce operating costs;
- Design features that accommodate and enhance the learning process;
- Incorporation of maximum operating efficiencies and new technologies to advance the energy efficiency of school facilities and the efficiency of other school building systems;
- Maximum access and benefit to the residents of the communities where they are located in order to serve as centers of community; and
- Buildings designed with the participation of community members.

Appendix 4

Key Components of Director McNeill's SCC Strategic Internal Plan

- Partnering with the Abbott districts in the predevelopment process that includes site selection.
- Partnering with other State agencies, specifically the Department of Education, the Attorney General's Office, the Department of Community Affairs, the Treasury, and the Department of Labor.
- Requiring that all potential bidders be pre-qualified by the State through a streamlined process.
- Reducing redundancies in approval processes by developing a task-order contract system⁴⁷.
- Eliminating the linear approach – design can proceed without waiting for a site to be totally acquired.
- Reorganizing and increasing the size of the staff in SCC.
- Revamping the MBE-WBE⁴⁸ Minority Workforce Program.
- Expediting the completion of health and safety projects.
- Developing protocols for renovations of early childhood contracting providers' facilities.
- Establishing guidelines to allow for design-build⁴⁹ methods.
- Moving demonstration projects forward.
- Providing improved information to the public on an SCC website.
- Securing funds for community design features not covered under the FES.⁵⁰

⁴⁷ *Selecting a group of architectural/engineering firms that are qualified under State guidelines to do up to a certain dollar amount of work and using those firms for some predevelopment site work and appraisals without going through the bidding process.*

⁴⁸ *Minority and Women Owned Business Enterprises*

⁴⁹ *Design-build entails giving a firm a contract to do both the design process and the build process. Director McNeill held that this process is a quicker and more cost effective way of building schools.*

⁵⁰ *August 28, 2003 letter from Director McNeill to Abbott Superintendents.*

Appendix 5

Abbott districts key responsibilities under the Abbott School Construction Program⁵¹

- Comprehensive review of educational plans for current and future programming involving administrators, teachers, and parents.
- Involving community in district-wide planning and project planning.
- Submitting and maintaining Long Range Facilities Plans.
- Updating enrollment projections yearly.
- Selecting viable sites for schools.
- Developing and updating implementation plans with NJDOE and SCC.
- Participating in architect selection process and working with architect to assure that designs will result in educationally adequate, safe, healthy, and sustainable buildings.
- Submitting applications for projects that reflect the needs of all students and the communities that will be served.
- Planning for occupation of new or renovated building –staffing, furnishing, and maintaining.
- Developing comprehensive maintenance plans and budgeting for upkeep of facility.
- Keeping accurate and up-to-date records.

⁵¹ *Compiled by ELC.*

Appendix 6

School Construction Program Proposals for Guidelines for Community Input

The following guidelines were presented by ELC to the Economic Development Authority/Schools Construction Cooperation, the Department of Education, and the Governor's office. Copies also have been distributed in meetings and conferences around the State during the past two years. ELC's objective is to have these guidelines included in NJDOE facilities regulations.

Goal – To maximize input from stakeholders in the Abbott School Construction Program.

Objective – Community involvement in school facilities planning and design is widely accepted as good public policy. Input from stakeholders ensures that new and renovated schools are responsive to the particular needs of families and children in the local community and are integrated into the community setting by making full use of existing resources and offering additional services needed to support education and community development.

Working with community stakeholders throughout the facilities planning and design process can be challenging and often time-consuming due to the amount of work needed to bring out the community, the learning curve required in many urban communities, the necessity for leadership in the community input process, and the need to pull together all input to reach a consensus. Despite good intentions, this process can require a significant number of meetings in some communities, necessitate funding for administrative costs (costs should be a part of predevelopment funding), and prove frustrating along the way. For this reason, administrators and school boards frequently try to avoid this type of activity. The EFCFA has provided little guidance except for the requirement of planning board review and the NJDOE has further thwarted the concept by establishing a system with no role for input from the community.

Despite the potential problems, disadvantages are far outweighed by the advantages of community engagement. The success of a school facilities project requires community buy-in. Outraged neighbors, disgruntled teachers and parents can be very costly, often resulting in picketing, litigation, expensive change orders, or vandalism. Prevention always is the best option. District and school employees come and go, but families and neighborhood residents have to live with facility decisions for generations. The end result of school construction should be a celebration with parents, staff, students, and community cheering as the ribbon is cut.

Informed involvement of stakeholders requires –

- Accurate, up-to-date, comprehensive, easy to understand information about the district’s facilities, their utilization, condition, costs related to maintenance, repair, and utilities as well as size, enrollment, and educational programs offered in each building.
- Long Range Facilities Plans, regularly updated with comprehensive implementation plans for prioritized school specific plans, site information, and swing space development prepared with public discussion, comment, and hearings.
- A transparent decision making process that entitles local stakeholders to affect decisions about school planning and design.
- Responsible, effective management of the program and projects that keep stakeholders regularly informed of schedules and seeks input when significant changes in the program or project are required due to unforeseen factors such as cost overruns, environmental problems, or land acquisition issues.

Education Law Center is proposing the following: Guidelines for Community Input

- 1. Abbott school districts must establish a permanent district-wide Facilities Advisory Board as required during development of the original Long Range Facilities Plans for the purpose of ongoing discussions during school planning, design and construction. This board must:**
 - a. Include parents (non-district employees and, if possible one or more parents that represent a constituency such as the PTA or other parent organizations); representatives of district employee unions; district administrators; a city council member or the mayor; a member of the city’s planning board; a SCC and DOE representative; representatives from student government, community groups, agencies, and businesses; a licensed architect and licensed engineer and other consultants hired by the district.
 - b. Meet a least 6 times per year;
 - c. Keep and distribute minutes for review;
 - d. Elect a chairperson;
 - e. Open all meetings to the public;

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- f. Allow public input through written comments and a public comment period during the meetings;
 - g. Designate a contact person within the district to communicate with the public; and
 - h. Review and approve all changes to existing plans prior to consideration by the board of education.

2. As part of the predevelopment process for a school project, the district must establish a Project Advisory Committee. This committee must:

- a. Include representatives from the administration, teachers, leaders from the school based management team, support personnel, parents (non-district employees), local community, preschool providers, business groups, church groups, neighbors, and non-profits. The school principal(if assigned) should serve as the leader and contact person for the committee. The project architect will also serve as a member of the committee;
- b. Meet monthly before and during the design process at times of the day that allow for public participation;
- c. Keep and distribute minutes for review;
- d. Advertise the meetings through posted signs in public places such as the neighborhood school, library, churches and local businesses;
- e. Open all meetings to the public;
- f. Allow public input through written comments and a public comment period during the meetings; and
- g. Review and approve school designs and other related plans and schedules before final approval by the administration or board of education.

Appendix 7

Abbott School Construction Program



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This citation appears on the following NCEF resource lists:

Case Studies— K-12 School Buildings <http://www.edfacilities.org/rl/case_studies.cfm>

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Dollars & Sense: The Cost Effectiveness of Small Schools

Knowledge Works Foundation, 2002

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Where Do Our Children Play? The Importance and Design of Schoolyards

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New Jersey Appleseed Public Interest Law Center

<http://www.edfacilities.org/rl/playgrounds.cfm>

About Education Law Center

ELC was established in 1973 to advocate on behalf of New Jersey's public school children for access to an equal and adequate education under state and federal laws through litigation, policy initiatives, constituency building, and action research.

ELC serves as counsel to the plaintiffs in the Abbott v. Burke case – more than 350,000 preschool and school-age children in 30 urban school districts across the state. The NY Times (2002) said that Abbott "may be the most significant education case" since Brown v. Board of Education. Abbott has also been called the most important NJ court ruling in the 20th century (NJ Lawyer, 2000).

The landmark Abbott IV (1997) and Abbott V (1998) rulings directed the State to implement a comprehensive set of remedies to improve education in the Abbott districts, including universal preschool, standards-based education, adequate foundational funding and facilities, whole school reform, and supplemental or "at risk" programs. ELC is now working to hold the State and districts accountable for effective, and timely implementation of these remedies.

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