

The Abbott School Construction Program
NJ Department of Education Proposed Facilities
Regulations: Analysis of Preschool Issues

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A BEST Project Report
(Building Educational Success Together)

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About Education Law Center

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 New York Times has said that *Abbott* "may be the most significant education case" since *Brown v. Board of Education* (New York Times, February 2002), and New Jersey lawyers have designated *Abbott* the most important court ruling in the State in the 20th century (*NJ Lawyer*, 1999).

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 K-12 foundational funding, supplemental or "at-risk" programs, and adequate school facilities. ELC is working to hold the State and districts accountable for effective and timely implementation of these remedies.

ELC is a partner in the BEST (Building Educational Success Together) Initiative. BEST advocates for adequate school facilities and funding, emphasizing making schools centers of high poverty communities. Led by the 21st Century School Fund, BEST promotes constituency building, research and communications, and policy reform in Washington DC, Chicago IL, New Jersey's Abbott districts, Cleveland, Columbus and Cincinnati, OH.

Starting at 3 is a national initiative at ELC to promote state-level advocacy to establish the right to preschool education for all three- and four-year olds in the United States.

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Purpose of The Report

This report on preschool facilities analyzes regulations proposed by the New Jersey Department of Education (NJDOE) to implement the Educational Facilities Construction and Financing Act. (EFCFA).¹ EFCFA, which authorizes and governs New Jersey's public school construction program, was enacted in July 2000 to implement the State Supreme Court's landmark 1998 ruling in *Abbott v. Burke* (*Abbott V*).²

Specifically, the report examines sections of the proposed NJDOE regulations related to planning and construction of facilities providing preschool education programs. The proposal regulations are evaluated for compliance with two constitutional mandates established in *Abbott V*: (1) safe and educationally adequate school facilities, and (2) well-planned, high quality preschool for all three- and four-year old children.³ These two mandates for a "thorough and efficient" public education are components of a set of comprehensive remedial measures ordered by the Supreme Court for the education of disadvantaged urban students. The *Abbott* ruling applies to 30 urban districts, known as "Abbott districts," which serve 25 percent of New Jersey's public school students.

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 (LRFP) by the end of the 2004-2005 school year, or by October 2005. These new LRFPs will replace the current (1999-2004) plans, providing the blueprint for each district's school construction program 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.⁴

As discussed in this report, the current LRFPs were hastily prepared in 1999 and failed to address preschool classroom and facility needs, even though *Abbott V* made such facilities first priority in the school construction program. Further, most existing preschool facilities – those owned or leased by non-profit community providers and Head Start programs – have yet to be assessed for educational adequacy. The preparation of new district LRFPs in 2005, therefore, offers an important opportunity to correct this basic implementation flaw in both the Abbott preschool and school construction programs.

This report begins with a summary of key findings and recommended amendments to the NJDOE proposed regulations. It then provides background on the Abbott preschool and school construction programs, analyzes the proposed NJDOE regulations, and makes recommendations for needed changes. As the report makes clear, substantial revision of the proposed rules are necessary to improve implementation of the Abbott preschool and facilities programs over the next five-year construction cycle. In issuing the report, ELC seeks to enlist the support of NJDOE, and the State Commissioner and Board of Education in making these essential improvements.

¹ NJ Stat. Ann. 18A:7G-2 (2000).

² 153 N.J. 480 (1998). More information on the *Abbott v. Burke* decisions is available on ELC's website, www.edlawcenter.org.

³ *Abbott V* required the State to address the facilities needs in urban school districts. Under EFCFA, the State has also assumed responsibility to "identify" facilities needs in all other districts, and to "contribute" to the cost meeting such needs. NJ Stat. Ann. 18A:7G-2c (2000).

⁴ NJ Stat. Ann. 18A:7G-4 and 26 (2000).

Summary

1. Findings

- An estimated 18,383 three- and four-year olds in Abbott districts are not enrolled in a preschool program in 2003-04, or 34 percent of the eligible universe. The current (1999-2000) district Long Range Facilities Plans (LRFP) do not address the facilities needed to enroll these children in high-quality preschool programs, as required by the Abbott rulings.
- 70 percent of Abbott preschoolers are currently served in facilities leased or owned by community providers and Head Start, under contract with the Abbott districts. These facilities have not been assessed for educational adequacy under standards consistent with the preschool program requirements mandated by the Abbott rulings.
- NJDOE proposes to exclude community providers of Abbott preschool from accessing school construction funds to support projects necessary to meet educational adequacy standards, except where the community provider currently owns its facility and an Abbott district chooses to include the facility in its LRFP. This policy conflicts with Abbott and EFCFA.

2. Recommendations

The NJDOE-proposed regulations begin to address, for the first time since 1999, the absence of comprehensive facilities planning for preschool programs by:

- Establishing separate facilities planning standards specifically linked to the requirements for teaching and learning in preschool programs; and
- Requiring districts to assess the facilities of community providers and Head Start programs, and include these facilities in the new (2005-2010) LRFPs to be submitted to NJDOE by October 2005.

These proposals, however, are insufficient and must be revised to ensure all preschoolers attend preschool in facilities that meet uniform preschool education planning standards. The recommended amendments include:

- Clarifying that assessment of all preschool facilities must be based on the proposed preschool facility planning standards, not the “facilities efficiency standards” for K-12;
- Requiring districts to include in the new LRFP plans to bring all facilities up to the preschool planning standards, including facilities used by community providers and Head Start;
- Clarifying that preschool enrollment projections in the new LRFPs must be based on the goal of serving 90 percent of the eligible preschool universe;
- Requiring that each districts’ Early Childhood Education Advisory Council (ECAC) lead the district LRFP planning process as it relates to preschool facilities; and
- Providing access to funding for the construction and rehabilitation of all community provider and Head Start facilities under the proposed preschool facilities planning standards.

Background

1. Abbott Preschool Program

The 1998 *Abbott V* ruling is the first judicial directive in the nation requiring public education to include a high-quality, well-planned preschool program starting at age three. The New Jersey Supreme Court based this mandate on research showing that intensive, high-quality preschool programs can close much of the early achievement gap for lower income children. The Court also recognized that children attending quality preschool programs perform better in school, leading to more productive lives as adults.⁵ *Abbott V* directed that the program begin in 1999-2000.

Under the Court's framework, Abbott districts can both operate their own classrooms and enter into contracts with community childcare and Head Start programs to provide preschool programs. The Court recognized that to reach universal enrollment, districts should utilize the existing infrastructure of community programs, making community and Head Start providers eligible to contract with Abbott districts, provided they are willing and able to meet the Abbott standards for high-quality preschool education.⁶

As a result of this collaborative framework, the vast majority of Abbott preschool children – nearly 70 percent in 2002-2003 – are being educated in either community centers or Head Start programs.⁷ Faced with this fact, the Supreme Court emphasized in 2000 the State's responsibility to prevent the development of a "two-tiered" preschool system in which district-run schools provide better quality services than community provider programs.⁸

Considerable progress has been made since *Abbott V* towards achieving universal preschool enrollment in the Abbott districts. Actual preschool enrollment has nearly doubled from 19,179 in 1999 to 36,465 in 2003. However, in 2002-03, an estimated 18,383 three- and four-year olds – 34 percent of the preschool population in the Abbott districts – were not served. One of the major barriers to achieving universal enrollment is insufficient classroom space.⁹

NJDOE data on program implementation strongly suggests that existing preschool classroom capacity may have reached its peak. Further, it is likely that insufficient classroom space is an obstacle to upgrading Head Start programs to meet the firm Abbott standard of 15 children per class.¹⁰ The Court recently underscored the importance of facilities in reaching the goal of universal preschool. The 2002 *Abbott VIII* ruling directs NJDOE to work with the districts to develop contingency preschool facility plans to accommodate enrollments that exceed current

⁵ NJDOE Office of Early Education regulations reiterate that preschool must prepare urban children "to enter kindergarten with skills and abilities more comparable to those of their wealthier suburban peers and thus to prepare them to succeed in school and life." NJ Admin. Code 6A:10A-2.1(2003).

⁶ NJ Admin. Code 6A:10A-2.2(b) (2003).

⁷ Education Law Center, October 2003 The Abbott Preschool Program: Fifth Year Report on Enrollment and Budget. This report is available at: http://www.edlawcenter.org/ELCPublic/elcnews_031029_universalpreschool.htm

⁸ 163 N.J. 95 (2000). This ruling – *Abbott VI* – clarified the preschool requirements initially established in *Abbott V* in response to claims that NJDOE had not properly implemented the program in 1999.

⁹ Fifth Year Preschool Report, p. 15.

¹⁰ Ibid.

capacity.¹¹ It is unclear, however, whether such plans have been developed or implemented for 2003-04.¹²

2. Abbott School Construction Program

Abbott V also affirmed that adequate school facilities are an essential component of a “thorough and efficient” education in New Jersey. To ensure compliance with this mandate in the Abbott districts, the Supreme Court directed the State to implement a comprehensive program of school facilities improvements, including long range district-wide facilities planning under state standards; project approvals for repair, new construction and renovation consistent with the district-wide plans; priority for safety repairs; sufficient classrooms to eliminate overcrowding and to implement universal preschool; and 100 percent State financing and construction management of all projects. These directives were then enacted by the Legislature in EFCFA.¹³

Under *Abbott V* and EFCFA, the long-range facilities plans serve as the vehicle by which the State and districts “make the site-sensitive decision of whether to renovate existing buildings or to construct new ones.”¹⁴ In 1999, acting under NJDOE guidelines, districts completed, and the NJDOE approved the first five-year LRFPs.¹⁵ Recent data indicates that NJDOE has approved 200 renovation and new construction projects contained in the approved LRFPs, transmitting them to the School Construction Corporation (SCC), the State agency designated to manage the construction of all Abbott facilities projects.¹⁶ Approximately 160 of those projects are in some stage of development with 35 schools now under construction.

Abbott V specifically addressed the need for preschool facilities, and made adequate classrooms to provide universal preschool a priority for school construction. However, there has been little effort to renovate existing preschool facilities, and progress towards building new classrooms for three- and four-year-olds has been extremely slow.

The lack of progress on preschool facilities can be directly attributed to deficiencies in the LRFPs completed by the districts in 1999. These deficiencies, in turn, resulted from critical gaps in the guidance provided by NJDOE to districts, including:

- NJDOE did not develop separate planning standards for preschool facilities.

¹¹ 170 N.J. 537 (2002). In *Abbott VIII*, the Court for a second time addressed disputes over the quality and speed by which NJDOE was implementing the Abbott preschool program.

¹² The NJDOE Office of Early Childhood Education requires a “facilities assessment” in the districts’ three-year operational plans, including “contingency plans to accommodate more students than current facilities.” NJ Admin. Code 6A:10A-2.3(d) (2003).

¹³ Although not required by *Abbott V*, EFCFA directs all school districts in the state to prepare an LRFP and obtain NJDOE approval of the plan. EFCFA also authorizes funding to support the construction of school facilities projects consistent with the approved LRFP. The level of state funding varies depending on community income and property wealth, ranging from 40 percent to 100 percent in the Abbott districts. NJ Stat. Ann. 18A:7G-4 and 5 (2000).

¹⁴ 153 N.J. 521 (1998).

¹⁵ A summary of the current (1999-2000) LRFPs, as approved by NJDOE, is available at:

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

¹⁶ The SCC, a subsidiary of the New Jersey Economic Development Authority, was created in July 2002 by Executive Order No. 24 (McGreevey). See <http://www.state.nj.us/infobank/circular/eom24.htm> .

- Although NJDOE directed that all district buildings be assessed for deficiencies, the agency did not require districts to similarly assess facilities utilized by community providers or Head Start programs, even though these facilities were housing Abbott preschool programs under contract with districts. As a result, community provider and Head Start buildings were not, and are still not, included in the current LRFPs.

- The NJDOE did not establish a direct link between the LRFP process and the Abbott preschool operational standards, particularly the requirement for universal enrollment and utilization of community providers and Head Start.¹⁷

- When the LRFPs were prepared in 1999, the Legislature had yet to authorize funds for the Abbott school construction program, so districts did not know whether the State would support renovation and new construction of their own schools. Absent direction from NJDOE, districts were unwilling to include community provider and Head Start facilities in their LRFPs.

- The NJDOE required districts to provide additional justification if their plans did not adhere to the grade level facilities models, or Facilities Efficiency Standards (FES) established by NJDOE. These rigid facility models – pre-K through 5, 6-8, and 9-12 – created confusion over whether districts could include stand-alone preschool centers in their LRFPs.

Some districts amended their LRFPs after 1999 to include plans for additional preschool classroom space, both district stand-alone centers as well as preschool classrooms in school buildings housing multiple grade levels. Several districts have early childhood centers presently under design, and seven are under construction. In addition, several elementary schools now under construction have classrooms designated for preschool. However, many of these new classrooms will not house additional students, but will relieve overcrowding that resulted from the push to accommodate as many three- and four-olds as quickly as possible. Some of the new classrooms will house children that were in the temporary classroom units – more commonly called trailers – installed in 2001 to ease the space crunch. Some vacated classrooms will be used to house students in other grades while buildings are being renovated.

Almost no progress has been made in improving and developing community provider and Head Start facilities, even though nearly 70 percent of all Abbott preschoolers attend a program in one of these settings. Although EFCFA authorizes districts to include community provider facilities projects in their LRFPs for renovations or new construction, NJDOE has made no effort to provide districts guidance on this provision of the law.¹⁸ Since 2000, only four Abbott districts have asked NJDOE to approve a community provider or Head Start facilities project, and none of these proposed projects has moved toward development.

As a result of the deficiencies in the current LRFPs, there is no accurate information on the scope of the need to house all Abbott preschoolers in educationally adequate facilities. Preschool children were not included in some LRFPs developed in 1999, and districts have not included community provider and Head Start facilities in their facilities needs assessment and

¹⁷ The NJDOE has separate regulations governing the annual operational plans for the Abbott preschool program, NJ Admin. Code 6A:10A-2.1 (2003), and school facilities plans for the Abbott construction program. NJ. Admin. Code 6A:26. These NJDOE-required plans have not been integrated in the past and, as this report makes clear, that essential link is still lacking.

¹⁸ NJ Stat. Ann. 18A:7G-5(d)s (2000).

planning process. Consequently, at the present time, there is no overall estimate of the number of new classrooms needed to achieve the Abbott mandate for universal preschool, nor any plan to ensure all preschool facilities – in-district, community provider and Head Start – are educationally adequate to deliver programs under the rigorous Abbott quality standards.

The Proposed NJDOE Regulations

As discussed above, EFCFA requires districts to prepare and submit new LRFP's by October 2005. The Act also requires NJDOE to establish, by regulation, guidelines and criteria for this process. In anticipation of this statutory deadline, the NJDOE has proposed regulations to govern the LRFP process, and the submission and review of individual school facilities projects, including preschool facilities.¹⁹ These proposed facilities regulations are currently under review by the State Board of Education.

Analysis of Proposed Regulations

1. Standards for Preschool Facilities NJ Admin. Code 6A:26-6.4.

For the first time, NJDOE is proposing a set of separate planning standards for preschool facilities, specifically related to the Abbott preschool program requirements. (NJ Admin. Code 6A:26-6.4).²⁰ In proposing these standards, NJDOE recognizes that the facilities standards for the K-12 educational program – the “Facilities Efficiency Standards” or “FES” – cannot be the sole determinant of space appropriate for early childhood education. The proposed preschool facility planning standards incorporate by reference the FES requirements for space for instruction, administration, and student services. (NJ Admin. Code 6A:26-6.4(b)(1)). The standards also include additional requirements unique to delivery of the preschool education, particularly those established by NJDOE in the “Preschool Teaching and Learning Expectations: Standards of Quality”²¹

However, the proposed preschool facilities planning standards apply only to design and construction of new facilities or additions to existing facilities. (NJ. Admin. Code 6A:26-6.4(a)). For rehabilitation and upgrades of community provider and Head Start facilities, the NJDOE proposes using Department of Human Services (DHS) standards for child care facilities. The DHS standards are significantly less rigorous than the proposed preschool facility planning standards. (NJ Admin. Code 6A:26-3.11(b)). For example, under the proposed preschool standards, classrooms must be 950 square feet but, under DHS standards, classrooms can be as small as 575 square feet.

Although the proposed regulations require that a district include an assessment of all community provider and Head Start preschool facilities in its LRFP (NJ Admin. Code 6A:26-2.2(a)(2)), there is no requirement that the proposed preschool facility planning standards guide the district-wide assessment process. In fact, as discussed in the following section, the proposed rules allow

¹⁹ The proposed facilities regulations, NJ Admin. Code 6A:26, is available at: <http://www.nj.gov/njded/code/title6a/chap26/amendment2>

²⁰ Appendix A provides a summary of the proposed preschool facility standards.

²¹ NJ Admin. Code 6A:10A-2.2(a) (2003).

assessment of preschool facilities based on the FES, or the NJDOE standards for facilities providing K-12 educational programs.

Recommendations:

- The regulations must make clear that assessment of all preschool facilities is to be based on the preschool facility planning standards, not the FES.
- Districts must be required to develop a plan to bring all facilities and programs up to the preschool facility planning standards, including facilities utilized by community providers and Head Start.
- NJDOE should develop specific guidelines in the regulations to permit a district to demonstrate grounds for an exception to the preschool facility planning standards, i.e., precisely how a facility will enable preschool children to meet the early childhood educational standards, even though it does not meet the requirements of the preschool facility planning standards.

2. Long-Range Facilities Plans
NJ Admin. Code 6A:26-2.2

a. Assessment of Existing Facilities
NJ Admin. Code 6A:26-2.2(a)

The proposed regulations require that a district's LRFP include an assessment of "the functional capacity of every school facility in the district." (NJ Admin. Code 6A:26-2.2(a)(2)). A "school facility" is defined as "any structure, building or facility used wholly or in part for educational purposes by a district or community provider." (NJ Admin. Code 6A:26-1.2). Accordingly, all facilities housing an Abbott preschool program, including community provider and Head Start facilities, must be assessed for functional capacity.

Under the proposal, the functional capacity of a building is related to the delivery of programs and services necessary for student achievement of the K-12 educational standards – the NJ Core Curriculum Content Standards (CCCS). Functional capacity is determined by dividing the adjusted gross square footage of a school facility by the minimum area allowance under the FES per student for each grade level. (NJ Admin. Code 6A:26-1.2).

There is no requirement that the functional capacity of a preschool facility be determined under the proposed preschool facility planning standards or the NJDOE Preschool Teaching and Learning Expectations: Standards of Quality. Although NJDOE acknowledges that the proposed preschool facility planning standards are the appropriate benchmark for the adequacy of a preschool facility, preschool facilities assessment is based solely on the FES. In addition, the proposed regulations fail to address issues unique to calculating the functional capacity of community provider and Head Start buildings. Most providers' buildings are not stand-alone facilities and frequently house other services. Many programs (about 60%) are in leased facilities. These regulations provide no guidance on assessing the functional capacity of programs in multiple-use buildings or in leased buildings with unrelated programs and services.

In addition to functional capacity, the assessment process for all school facilities, including community provider and Head Start facilities, must include an inventory of all systems in each

building, a determination of life expectancy of all systems, any system deficiencies in each facility, and the required remediation. (NJ Admin Code 6A:26-2.2(a)(3)-(6)).

Recommendations:

- A determination of functional capacity for preschool facilities must be based on the preschool facilities planning standards, which are specifically related to the early childhood education program, and not the FES, which is related to delivery of the CCCS.
- The regulations must provide a method of assessing functional capacity for programs in multi-use buildings.

**b. Determining Unhoused Students
NJ Admin. Code 6A:26-2.2(b)(1)**

Calculating unhoused students is a critical step in the LRFP process since such calculations will determine the need for new classroom space. NJ Admin. Code 6A:26-1.2.²² NJDOE proposes to define “unhoused students” as “the number of students in excess of the functional capacity of a school facility and a community provider facility for a community provider providing early childhood education programs for preschool...” (NJ Admin. Code 6A:26-1.2 and 2.2(b)(1)).

As noted in the preceding section, the proposed regulations base functional capacity for a preschool facility on the FES, not the preschool facilities planning standards. Consequently, under the proposal, a district may determine that a building has no unhoused students under the FES standard of 125 square feet per student, even though it does not meet the preschool facility planning standards. In such a case, a district would not have to plan to upgrade the facility or build new facilities to meet the proposed preschool facilities standards. Conversely, there may be preschool facilities that meet the preschool facilities planning standards and are adequate to meet the educational needs of preschool students, yet do not meet the FES. In this case, under the proposed rules, a district would have to plan for facilities for the “unhoused students,” even though the building is adequate under the new preschool standards.²³

Recommendation:

- The definition of “unhoused students” for preschool facilities must be based on the functional capacity of a building in relation to the preschool facilities planning standards.

**c. Enrollment Projections:
NJ Admin. Code 6A:26-2.2(a)(1)**

Enrollment projections for the five ensuing years must be included in a district’s LRFP. The proposed rules state that districts “shall make appropriate adjustments to enrollment projections for preschool children based on the history of actual enrollments in those programs and consistent with the district’s approved [early childhood education] plan.” (NJ Admin. Code

²² The definition of “school facilities project” in NJ Admin. Code 6A:26-1.2 provides, in part: “To qualify as a school facilities project, the project must be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional ...”

²³ Appendix B contains two examples of the application of the proposed unhoused student calculation.

6A:26-2.2(a)(1)(vi)). Abbott districts are obligated to serve 90 percent of the universe of Abbott preschool children by 2005-2006.²⁴ Since Abbott districts have not achieved this goal – 34 percent of Abbott preschoolers were not served in 2002-2003 – allowing districts to base preschool enrollment projections on “actual enrollment” for purposes of facilities planning will preclude districts from providing facilities adequate to meet the goal of 90 percent enrollment.

Recommendation:

- The regulations must make clear that preschool enrollment projections must be based on the goal of serving 90 percent of the eligible preschool universe.

d. Stakeholder Involvement in the LRFP Process

- The proposed rules do not allow for any community or stakeholder involvement in the LRFP process, other than review of the plan and submission of findings by the district’s local planning board. (NJ Admin. Code 6A:26-2.2(c)). There is no provision for representatives of community provider or Head Start programs to participate in facilities planning, even though these programs serve nearly 70 percent of all Abbott preschool children.

Recommendation:

- The proposed rules should require that the district Early Childhood Education Advisory Council (ECEAC) serve as the local entity to lead the district LRFP planning process as it relates to preschool facilities. Membership on the ECEAC must consist of “community stakeholders, and include child care center providers and parents,” thus ensuring a collaborative effort on this critical issue.²⁵

3. Excluding Community Providers and Head Start from the Abbott School Construction Program
NJ Admin. Code 6A:26-3.11(a)(4)

NJDOE’s proposed regulations exclude community providers and Head Start from the Abbott school construction program, except in the limited circumstance of rehabilitation or addition to an existing facility owned and operated by the community program. (NJ. Admin. Code 6A:26-3.11(a)(4)).

This policy mirrors the position recently adopted by the Schools Construction Corporation (SCC) in regulations governing the funding of preschool facilities projects.²⁶ Under the NJDOE proposal, community provider and Head Start programs would be ineligible for EFCFA funding to upgrade and rehabilitate leased facilities and to construct new facilities. Since nearly 70 percent of Abbott preschoolers attend a program in a community setting, and NJDOE estimates that approximately 60 percent of these programs operate in leased facilities, the State’s limitation on facilities funding will have the effect of consigning many Abbott preschool children

²⁴ The NJDOE Office of Early Childhood Education has established this enrollment target. NJ Admin. Code 6A:10-2.1(a)(13)(iii) (2003).

²⁵ NJ Admin. Code 6A:10-2.1(a)(11) (2003).

²⁶ NJ. Admin. Code 19:36-1.3 (effective November 17, 2003); see http://www.njscc.com/pdfs/regulations_19_36.pdf.

to substandard buildings. This policy violates the plain language of EFCFA, and undermines the Act's purpose of fulfilling the facilities and preschool mandates of *Abbott V.*²⁷

The proposed rules state that districts are “encouraged to include one or more community provider early childhood education facilities projects ... as part of its LRFP” (NJ Admin. Code 6A:26-2.2(d)) but there is no mechanism or framework within the regulations to cause a district to choose upgrade of an existing community provider facility over new construction or upgrade of an in-district facility. Given their own facilities needs, districts are unlikely to support funding of community provider projects without significant funding and other incentives by NJDOE. The proposed regulations also state that “[s]uperintendents are strongly encouraged to meet and collaborate with community early childhood education providers to meet the needs of unhoused students in the LRFP.” (NJ Admin. Code 6A:26-2.2(d)). However, as discussed above, SCC regulation severely limits the availability of Abbott school construction funding for projects to upgrade community provider facilities. Only those projects included in a district's LRFP are eligible for facilities funding.²⁸

NJDOE's summary of proposed section NJ .Admin. Code 6A:26-3.11 states that the limitation of funding to rehabilitation and addition to buildings owned and operated by a community provider is “reflective of the policy decision of having districts hold title to new school facilities (whether by acquisition or construction) which may in turn house programs delivered by community providers.” Such a policy could be a part of a broader strategy of allowing various ownership and lease arrangements to meet the needs of all Abbott children, but neither NJDOE nor SCC regulations establish the procedures and framework necessary to allow this type of relationship between districts and community providers.

By failing to provide for construction or upgrade of the majority of community provider and Head Start facilities, the proposed regulations thwart the Supreme Court's directives in the Abbott rulings to (1) prioritize construction of Abbott preschool facilities, and (2) eliminate disparities between district-run and community-based programs.

Recommendations:

- NJDOE must establish standards and procedures to allow a variety of arrangements and relationships to fund construction and rehabilitation of all community provider and Head Start facilities that do not meet the new preschool facilities planning standards.
- The regulations must comport with EFCFA and allow funding for site acquisition and new construction for community provider and Head Start facilities.
- The regulations must include funding to upgrade all community provider and Head Start facilities, including lease facilities, to meet the preschool facilities planning standards.

²⁷ ELC's analysis of the legal deficiencies in the SCC rule is available at <http://www.edlawcenter.org/ELCPublic/AbbottSchoolFacilities/FacilitiesPages/FacilitiesResources.htm>.

²⁸ The NJDOE recently refused to allow the Trenton district to amend its LRFP to include a new facility for the Trenton Head Start program, a decision that will likely be the subject of a legal challenge by the district. See “Head Start Works On Preschool Snags,” Times of Trenton (December 19, 2003).

- The regulations must facilitate the ability of community provider and Head Start programs to access and utilize funding from various sources, e.g., community loan funds, private lenders, federal funding (Head Start), and Economic Development Authority

Conclusion

The NJDOE proposed facilities regulations take some steps in addressing the need for educationally adequate preschool facilities by establishing separate facilities planning standards that reflect the Abbott preschool program requirements, and by requiring an assessment of all facilities currently used to provide preschool, including facilities owned or leased by community providers and Head Start.

The proposals, however, are insufficient to ensure all children attend Abbott preschool programs in educationally adequate facilities, whether operated by the school district or community provider. Districts must be required to assess all facilities based on uniform standards of preschool education adequacy, and include such assessments in the new (2005-2010) LRFPs. Districts should also be required to engage local stakeholders in the Abbott preschool program in the assessment and planning process. Finally, the NJDOE, along with SCC, must establish clear protocols to guide districts in applying for, and securing, funds through the Abbott school construction program to upgrade all facilities to meet the standards of preschool educational adequacy.

Appendix 1: Highlights of the Proposed Educational Facilities Planning Standards for Preschool, N.J.A.C. 6A:26-6.4

- Classroom minimum square footage of usable space per child as required in the FES; usable space per child shall exclude storage equipment or furnishing that are built-in or not easily movable.
- Space for administration and student services as required by the FES.
- Classrooms no higher than the second floor of a school facility.
- 100 square feet of outdoor play space for each child using that space at one time.
- Classrooms with a sink no higher than 26 inches, separate from the toilet room.
- Classrooms with operable windows and inside locks.
- Classrooms with diaper/clothes changing area.

Appendix 2: Examples of Proposed Unhoused Student Calculation

Example #1: A community provider's building contains six 950 square foot (EFCFA size requirement) classrooms and a small 200 square foot office centered around a reception area. There is a well kept outdoor play area. All classrooms and outdoor space conform to the preschool facilities standards. The total building size is 6500 gross square feet and houses 90 students, 15 per classroom. Therefore each student has approximately 72 square feet of space, well under the EFCFA requirement of 125 square feet per student. Thus despite this ideal setting for preschoolers, the district could consider close to half of these students "unhoused."

Example #2: Another community provider is running Abbott preschool classes in a church basement. There are six 750 square foot classrooms connected to a large 5000 square foot church hall, a 100 square foot office and a 2000 square foot kitchen where food is prepared for the children. Natural light is almost non-existent. There is no outdoor play space. The building is old and badly in need of updating. Total square footage available for use by the provider for preschool – 11,700 square feet for 90 students or 129 square feet per student. A school district could not consider these students unhoused because the functional capacity is over 125 square feet per student.