

**GENOVA BURNS LLC**

Angelo J. Genova, Esq. (005501979)  
Jennifer Borek, Esq. (041131997)  
Matthew S. Oorbeek, Esq. (073242013)  
494 Broad Street  
Newark, New Jersey 07102  
(973) 533-0777  
*Attorneys for Plaintiffs,  
Jersey City Board of Education and  
E.H., a minor, by his guardian ad litem  
Shanna C. Givens*

---

JERSEY CITY BOARD OF EDUCATION and  
E.H., a minor, by his guardian ad litem, SHANNA  
C. GIVENS,

Plaintiffs,

v.

STATE OF NEW JERSEY, NEW JERSEY  
DEPARTMENT OF EDUCATION, DR.  
LAMONT REPOLLET, in his official capacity as  
Commissioner of Education, NEW JERSEY  
OFFICE OF MANAGEMENT AND BUDGET,  
NEW JERSEY DEPARTMENT OF TREASURY,  
ELIZABETH MAHER MUOIO, in her official  
capacity as New Jersey State Treasurer, NEW  
JERSEY SCHOOLS DEVELOPMENT  
AUTHORITY, and MANUEL M. DA SILVA, in  
his official capacity as Interim CEO of the School  
Development Authority.

Defendants.

---

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO.: MER-L-914-19

**CIVIL ACTION**

**FIRST AMENDED VERIFIED  
COMPLAINT**

Plaintiffs Jersey City Board of Education (“JCBOE”) and E.H., a minor, by his guardian ad litem Shanna C. Givens, by and through their attorneys Genova Burns LLC, by way of this First Amended Verified Complaint, against Defendants State of New Jersey, New Jersey Department of Education (“DOE”), Dr. Lamont Repollet, in his official capacity as Commissioner of Education (“Commissioner”), New Jersey Office of Management and Budget (“OMB”), New Jersey

Department of Treasury (“Treasury”), Elizabeth Maher Muoio, in her official capacity as New Jersey State Treasurer (defendants the State of New Jersey, DOE, Dr. Repollet, OMB, Treasury, and Ms. Muoio collectively referred to as “SFRA Defendants”), New Jersey Schools Development Authority (“SDA”), and Manuel M. Da Silva, in his official capacity as Interim CEO of the SDA (defendants SDA and Da Silva collectively referred to as “SDA Defendants”) (and all defendants collectively referred to as “Defendants”) say:

### **NATURE OF THE CASE**

1. A growing body of evidence demonstrates that when states invest in their public schools and create more equitable school financing systems, student achievement levels rise. Yet for over forty years, the State of New Jersey - which is constitutionally mandated to provide a “thorough and efficient education” to all of its students - has failed its public-school students in poorer urban districts with the lack of any comprehensive school funding scheme that would provide them with the necessary tools to succeed in school and beyond. These failures have resulted in a series of decisions and orders, first in Robinson v. Cahill then in Abbott v. Burke, which struck down school funding statutes that violated the State's constitutional duty to provide a thorough and efficient education to all students. The Abbott rulings established standards for New Jersey public school children’s fundamental right to education, and in 2009, the Abbott Court approved, as facially constitutional, a statewide weighted student funding formula, implemented by the State as the School Funding Reform Act of 2008 (“SFRA”).

2. Unfortunately, now ten years since SFRA was implemented, it remains clear that SFRA Defendants have continuously failed to comply with their obligations to ensure that JCBOE is funded under SFRA at a level necessary to provide its students with the proper education to which they are entitled; specifically a level to enable JCBOE to spend at the Adequacy Budget

level. JCBOE has been fully funded at a constitutionally required level in only the first year SFRA was implemented, the 2008-09 school year. Since that first year, JCBOE has steadily been slipping further and further below the Adequacy Budget established in SFRA and which is the constitutional benchmark for a thorough and efficient education. As a result of being funded below adequacy for a decade in a cumulative amount that exceeds \$700 million, JCBOE will be forced to lay off hundreds of instructional and support staff and eliminate vital programs including special education programs, athletics, extracurricular activities, and afterschool programs. And this year, SFRA Defendants took steps to ensure that JCBOE falls further below adequacy, implementing recent amendments to SFRA which will eliminate in excess of \$795 million in state aid to JCBOE over the next five years. In the upcoming 2019-20 school year alone, JCBOE's state aid has been cut by more than \$27 million, and, while JCBOE was able to take steps to balance its budget this year, it is highly likely that it will not be able to balance its budgets in the coming years as the cuts to Adjustment Aid substantially increase.

3. If the recent amendments to SFRA are permitted to be fully implemented, resulting in more than \$795 million in additional reductions in state aid over the next five years, the calamity that would ensue would be insurmountable. Drastic cuts would have to be taken, eliminating hundreds of teaching and support positions, and eliminating vital programs that ensure that an entire generation of JCBOE students achieve the educational standards necessitated by the thorough and efficient clause of the Constitution. These negative impacts would follow thousands of JCBOE students for the rest of their lives, severely reducing their chances of being accepted into college or other secondary schooling and their ability to be constructive members of the work force. JCBOE students are a diverse group, with a large percentage of children coming from low income households with unique socio-economic issues, including crime, poverty, limited English

proficiency and mental health demands that require special programming, including subsidized meals, special education and out-of-district placements due to Individualized Education Plans. With cuts of these proportions in a district such as JCBOE, it is easy to see how these recent amendments would wipe out all of the progress that has been made as a result of school funding reforms stemming from decades of litigation.

4. In addition to Defendants' failure to ensure that JCBOE's school funding is at the Adequacy Budget level, JCBOE also has been deprived of funds for the maintenance and construction of its facilities.

5. The Supreme Court has held, in several Abbott decisions including Abbott IV and V, that the State is required to fully fund the maintenance and construction of educational facilities in special needs districts, such as JCBOE, to ensure compliance with the Thorough and Efficient Clause of the New Jersey constitution.

6. The Educational Facilities Construction and Financing Act ("EFCFA") was enacted to carry out the edicts of the Abbott cases and the Thorough and Efficient Clause and required the SDA to fully fund all DOE-approved capital projects in the special needs districts' Long Range Facilities Plans. While the DOE has approved in excess of \$1.3 billion in capital projects in JCBOE's most recent Long Range Facilities plans, the SDA has only funded approximately \$300 million for these projects. The SDA has admitted that it does not have the funds necessary to commence any new capital projects in any of the special needs districts, including JCBOE. Consequently, Defendants have failed to comply with their constitutional and statutory obligations to fully fund the maintenance and construction of educational facilities in JCBOE.

7. Defendants must now be ordered to comply with their constitutional obligations to ensure that the JCBOE students who face the devastating cuts to SFRA as well as the lack of funding to maintain and construct safe and adequate facilities will not be harmed. Even one child without a proper education is too many – the threat faced here will affect thousands.

### **PARTIES**

8. Plaintiff JCBOE is a body corporate and political subdivision of the State of New Jersey and, pursuant to Title 18A of the New Jersey Statutes, has been established as the public body responsible for administering the public education of the residents of the Jersey City school district.

9. Plaintiff E.H., a minor, through his guardian ad litem, Shanna C. Givens, is a resident of Jersey City and a student attending a Jersey City public school operated by the JCBOE, specifically Gladys Nunery PS #29.

10. Defendant State of New Jersey (“State”) is a sovereign state in the United States that enacted and enforces SFRA and EFCFA, the statutes at issue in this litigation.

11. Defendant New Jersey Department of Education (“DOE”) is charged with implementing and enforcing laws and regulations governing education in the State of New Jersey, with offices located at 100 River View Plaza, Trenton, New Jersey 08625.

12. Defendant Dr. Lamont Repollet, in his official capacity as Commissioner of Education (“Commissioner”), is the individual charged with implementing and enforcing laws and regulations governing education in the State of New Jersey, with offices located at 100 River View Plaza, Trenton, New Jersey 08625.

13. Defendant New Jersey Department of Treasury (“Treasury”) administers the budget of the State of New Jersey, with offices located at 50 W. State Street, Trenton, New Jersey 08608.

14. Defendant Elizabeth Maher Muoio, in her official capacity as New Jersey State Treasurer, is the individual charged with administering the budget of the State of New Jersey, with offices located at 50 W. State Street, Trenton, New Jersey 08608.

15. Defendant Office of Management and Budget (“OMB”) is a division of Defendant Department of Treasury and is charged with managing the State’s financial assets, and aids in ensuring that taxpayer resources are allocated in accordance with state laws, regulations, policies and guidelines, with offices located at 50 W. State Street, Trenton, New Jersey 08608.

16. Defendant New Jersey Schools Development Authority (“SDA”) is in, but not of, the Treasury and is charged with planning and sequencing school construction projects and is responsible for funding 100 percent of eligible project costs in the 31 special needs districts, known as SDA Districts, which includes JCBOE, with offices located at 32 East Front Street, Trenton, New Jersey 08608.

17. Defendant Manuel M. Da Silva, in his official capacity as Interim CEO of the SDA, is charged with fully funding and managing the new construction, modernization and renovation of approved school facilities projects in the 31 special needs districts, known as SDA, which includes JCBOE.

#### **VENUE**

18. Venue in Mercer County is appropriate because that is where Defendants reside, pursuant to Rule 4:3-2.

## FACTUAL AND LEGAL BACKGROUND

### **1. Facts Pertaining to Claims Related to SFRA**

#### **a. History of New Jersey Education Funding for Public Schools Prior to SFRA.**

19. For decades, the New Jersey Supreme Court has established and enforced requirements in almost 30 opinions and orders to ensure that students in poorer urban school districts have sufficient funding to enable them to receive the “thorough and efficient” education guaranteed by the New Jersey Constitution.

20. Specifically, the Constitution requires the Legislature to “provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.” N.J. Const. art. VIII, § 4.

21. While the State has delegated some authority to local districts related to public education, “the ultimate responsibility for a thorough and efficient education was imposed upon the State.” Robinson v. Cahill, 62 N.J. 473, 508-09 (1973).

22. Since 1973, the Supreme Court has enforced these constitutional guarantees for students in so-called “special needs” school districts, first in the Robinson v. Cahill line of cases, and later in the Abbott v. Burke cases which commenced in 1981.

23. In 1990, the Supreme Court issued its second Abbott decision ruling in Abbott v. Burke, 119 N.J. 287 (1990) (“Abbott II”), that the then school funding law, the Public School Education Act of 1975, was unconstitutional as applied to children in 28 “poorer urban” school districts.<sup>1</sup>

---

<sup>1</sup> The number of districts was subsequently increased to 31.

24. The Court specifically held in Abbott II that the school funding mechanism in place at the time was neither thorough nor efficient, and that it “must be amended to assure funding of education in poorer urban districts at the level of property-rich districts; that such funding cannot be allowed to depend on the ability of local school districts to tax; that such funding must be guaranteed and mandated by the State; and that the level of funding must also be adequate to provide for the special educational needs of these poorer urban districts in order to redress their extreme disadvantages.” 119 N.J. at 295.

25. JCBOE was one of these originally designated “Abbott Districts”.

26. JCBOE’s designation as an “Abbott District” had not changed prior to the abandonment of the “Abbott District” designation in favor of the “SDA District” characterization as used in SFRA.

27. JCBOE has been and is currently designated as an “SDA District”.

28. In response to the Abbott II decision, the Legislature enacted the Quality Education Act (“QEA”), which provided slight increases in school funding for the Abbott Districts, including JCBOE, but did not provide substantial equivalence in per-pupil funding with wealthier districts.

29. As a consequence, like its predecessor school funding laws, the QEA was held in Abbott v. Burke, 136 N.J. 444 (1994) (“Abbott III”) to violate the “thorough and efficient” clause of the Constitution and the Supreme Court directed the Legislature to adopt yet another replacement school funding law that provided substantial equivalence in funding.

30. Thereafter, a new school funding statute was enacted, the Comprehensive Education Improvement and Financing Act (“CEIFA”), but in Abbott v. Burke, 149 N.J. 145 (1997) (“Abbott IV”), it, too, was struck down as unconstitutional.

31. Subsequent to finding that CEIFA failed to provide a thorough and efficient education to students in Abbott Districts, the Supreme Court ordered in Abbott IV what came to be known as the “parity remedy”, that is, until the State enacted and implemented a constitutional school funding scheme, the Abbott Districts would be afforded parity in per-pupil expenditures compared to wealthier school districts. Abbott IV, 149 N.J. at 190-191.

32. Following the parity remedy ordered in Abbott IV, the Supreme Court entered additional remedial orders, such as in Abbott v. Burke, 153 N.J. 480 (1998) (“Abbott V”), where, *inter alia*, the Court ordered the creation of supplemental programs and reforms and established a process for Abbott Districts to seek additional funding for supplemental programs and capital improvements.

**b. Passage of SFRA**

33. In an effort to replace CEIFA with an alternative, and constitutional, school funding statute, the DOE, along with a consulting firm, used a methodology known as a Professional Judgment Panel (“PJP”) to develop the new funding mechanism.

34. The PJP method was used to identify “desired performance standards, then develop[] prototypical model districts, and finally employ[] panels of experts to determine the resources needed to reach the selected performance standards in those districts.” Abbott v. Burke, 196 N.J. 544, 552 (2008) (Abbott XIX).

35. The State’s “use of the PJP methodology began with a determination that its performance standards would be the Core Curriculum Content Standards (“CCCS”), which were deemed in Abbott IV, [], to be a reasonable definition of a constitutionally sufficient, thorough and efficient education.” Id. at 552-53.

36. The PJP process involved educators from across the State as well as the use of experts, resulting in the creation of expert reports as well as public hearings. Id. 552-54.

37. The PJP process also resulted in the creation of the “Report on the Cost of Education,” created in conjunction with the DOE and an expert education consulting firm, which set forth modeling for instructional and support staff necessary to deliver a thorough and efficient education. Attached hereto as **Exhibit A** is a true and correct copy of the Report on the Cost of Education.

38. Ultimately, this process culminated in the creation of the new school funding formula contained within SFRA.

39. In January 2008, the State enacted that new school funding statute - SFRA, N.J.S.A. 18A:7F-43 to -63 - in an attempt to provide a constitutionally sound mechanism and formula to provide a thorough and efficient education to the children of the State. Id.

40. While SFRA was the funding method enacted to provide a thorough and efficient education, the performance standards would continue to be the CCCS, which the Court in Abbott v. Burke, 149 N.J. 145, 168 (1997) (“Abbott IV”) found to “spell out and explain the meaning of a constitutional education.”<sup>2</sup>

41. As set forth in the legislative findings accompanying SFRA, the “formula established under this act is the product of a careful and deliberative process that first involved determining the educational inputs necessary to provide a high-quality education, including specifically addressing the supplemental needs of at-risk students and those with limited English proficiency (LEP), and a determination of the actual cost of providing those programs. The formula

---

<sup>2</sup> The CCCS were created to prepare students for “college and career”, embracing nine subject areas. N.J.A.C. 6A:8-1.1.

provides adequate funding that is realistically geared to the core curriculum content standards, **thus linking those standards to the actual funding needed to deliver that content.**” N.J.S.A. 18A:7F-44(i) (emphasis added).

42. SFRA consists of a weighted school funding formula, used to determine state and local funding levels needed to provide the core curriculum content standards and a constitutionally required thorough and efficient education.

43. As a weighted formula, SFRA provides a "base per pupil amount" for elementary students, which is then weighted for middle and high school students, with additional weighted funding to support the costs of programs for at-risk students, limited-English proficient (LEP) students, and students with disabilities. Abbott v. Burke, 199 N.J. 140, 153-54 (2009) (“Abbott XX”).

44. The "base per-pupil amounts," together with the aforementioned additional funding for special needs students and a geographic adjustment, constitute the district’s “Adequacy Budget.”<sup>3</sup> Id. at 155.

45. The Adequacy Budget is SFRA’s main constitutional metric for assuring that school districts have sufficient funding to provide their students with a constitutional education by determining the minimum level of resources that are needed for students to achieve the CCCS.

---

<sup>3</sup> SFRA provides for review and evaluation of the resources and costs necessary to comply with the CCCS every three years, requiring the Governor, after consultation with the commissioner, to produce Education Adequacy Reports to the Legislature addressing, *inter alia*, the weights which comprise the Adequacy Budget. See N.J.S.A. 18A:7F-46(b). The purpose of the Education Adequacy Reports was to ensure that SFRA was adjusted to ensure its efficacy as a school funding mechanism providing for a constitutional education. Two such reports have been issued since the passage of the SFRA, in 2012 and 2016, both of which were submitted substantially after their due dates. See Certification of Melvin L. Wynn (“Wynn Cert.”), ¶ 16-18. The third report was due to be transmitted to the Legislature by September 1, 2018; however, this did not occur and no additional Education Adequacy Report has been issued. Id. at ¶ 19.

46. Pursuant to SFRA, funding for the Adequacy Budget derives from two sources, a district's Local Fair Share ("LFS") and Equalization Aid from the State.

47. In theory, a district's LFS is the amount that a district should be able to provide toward its Adequacy Budget.

48. The funding for a district's LFS is derived from the district's property tax levy. See N.J.S.A. 18A:7F-38(a).

49. From 2010 through 2018, a district's ability to raise revenue to support its LFS was limited by a two percent cap on yearly increases to property tax rates. See Wyns Cert., ¶ 26.

50. From 2008 to 2010, the revenue cap was four percent.

51. These property tax caps, in turn, limited the increases in the amount of the local tax levy to be used for school funding. See gen. Wyns Cert., ¶ 162.

52. As a practical result, therefore, if a district's SFRA-defined LFS increased by more than two percent in a year, a shortfall, or local levy gap, would develop since a district could only increase its local levy toward its LFS by two percent. Id. at ¶ 27.

53. In essence, a local levy gap would appear whenever a district's local school tax levy did not equal the LFS as calculated pursuant to SFRA. Id. at ¶ 28.

54. Although this local levy gap was supposed to be filled by other categories of aid, SFRA Defendants' application of SFRA prevented this from occurring as discussed below.

55. SFRA originally provided five general categories of state aid: Equalization Aid, Categorical Aid, Transportation Aid, Adjustment Aid and Education Adequacy Aid.

56. Equalization Aid is state aid used to support the Adequacy Budget by funding the difference between a district's Adequacy Budget and its LFS.

57. By operation of the SFRA formula, as a district's LFS increases, its Equalization Aid necessarily decreases, thereby increasingly shifting the burden of funding the constitutionally required thorough and efficient education from the State to the district.

58. Categorical Aid provides funding on a per-pupil basis for certain expenses, including special education, and security costs.

59. Adjustment Aid, which is being phased out and will be completely eliminated in the 2024-2025 school year as it relates to JCBOE, is at the heart of this litigation and was designed to ensure that districts would be able to at least maintain their 2007-08 level of spending without significant local tax levy increases and to provide the time needed by these districts to raise their local levies to equal their LFS.

60. Adjustment Aid is provided to a district if the sum of its Equalization Aid, Security Aid, Special Education Categorical Aid, Extraordinary Aid and Transportation Aid - essentially the totality of State aid – was less than the district's 2007-2008 spending plus two percent.

61. By operation of the SFRA formula in place prior to its recent amendments, as a district's Equalization Aid decreased, its Adjustment Aid increased when a local levy gap existed. See Wyns Cert., ¶ 25.

62. The final category of state aid included in SFRA is Education Adequacy Aid, which is provided to certain Abbott Districts that were spending below their Adequacy Budgets at the time SFRA was implemented.

63. When SFRA was signed into law and initially implemented for the 2008-09 school year, educational funding for public schools in Jersey City was nearly in line with the Adequacy Budget level established by SFRA.

64. As a holdover from the way previous education funding laws were implemented, however, the budget for the Jersey City public schools was supported primarily by state aid, as opposed to funding from local tax revenue, and the amount raised from the district property tax was below its LFS as calculated by SFRA, producing a local levy gap.

65. Adjustment Aid was intended to provide those districts with a local levy below their SFRA-driven formulaic LFS with the time needed to increase their local levy to an amount equal to their LFS. Abbott XX, 199 N.J. at 165-166.

66. Upon the passage and signing of SFRA by then Governor Jon Corzine, the State sought to reopen the Abbott cases by filing a motion seeking declarations from the Supreme Court that SFRA satisfies the constitutional requirement that the State provide a thorough and efficient education to children of the State and that the Supreme Court's prior remedial orders concerning the failure by the State to provide a thorough and efficient education to the students in the Abbott districts were no longer necessary.

67. The Court ultimately decided in Abbott v. Burke, 196 N.J. 544 (2008) ("Abbott XIX"), that the question of SFRA's constitutionality was not suited for summary disposition and remanded the matter to a Special Master to develop a full and complete factual and evidential record addressing the contentions raised by the parties.

68. Notwithstanding the general presumption of validity of a statute, the Court noted that its prior remedial orders require that the **State** bear the burden of proving that SFRA provides a constitutional thorough and efficient education. Abbott XIX, 196 N.J. at 550, 559.

69. Following remand, the Special Master conducted evidentiary hearings and heard testimony from numerous fact and expert witnesses. Ultimately, he submitted a Special Master's Report concluding that SFRA was facially constitutional but recommending that supplemental

funding continue to Abbott districts during and until a three-year look-back review of SFRA because he could not predict its immediate and practical effect on the educational services provided in Abbott districts.

70. Upon review of the Special Master's Report, the Supreme Court issued its decision regarding the constitutionality of SFRA. Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX").

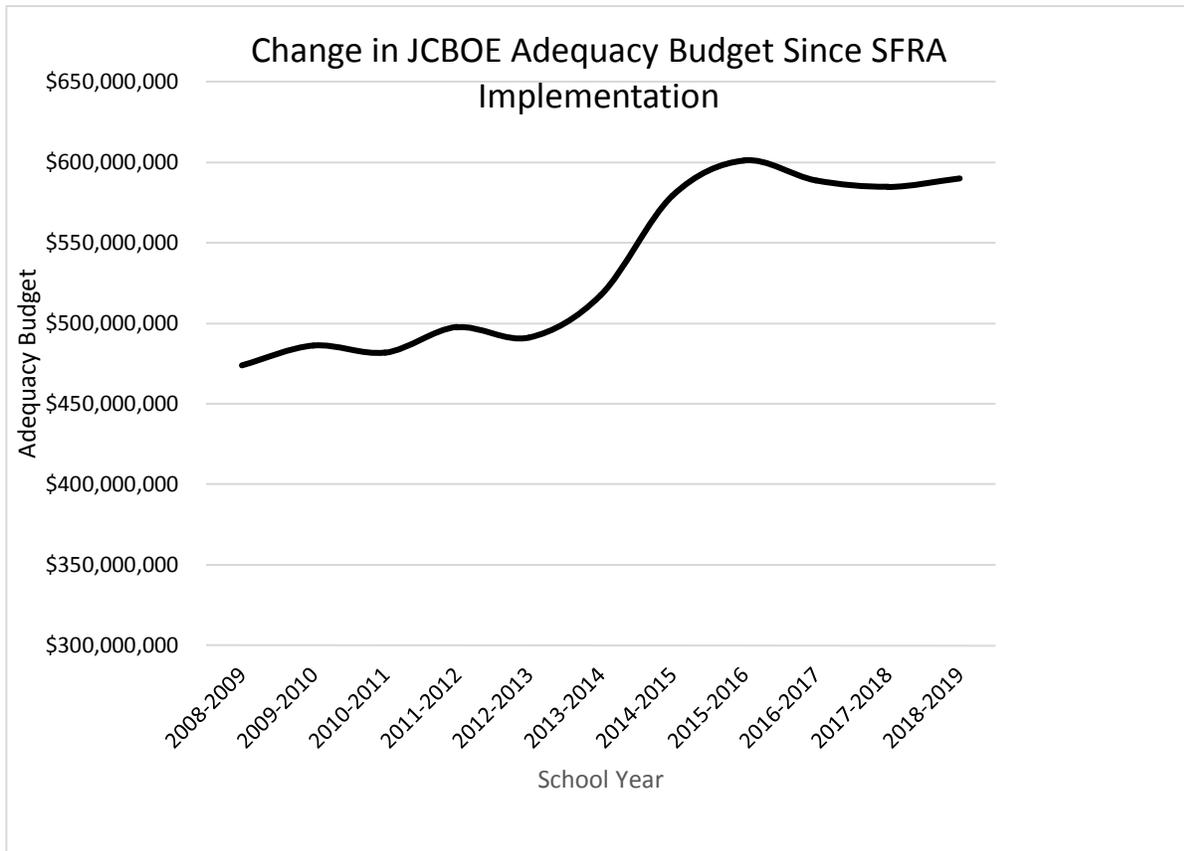
71. In that decision, the Court found that SFRA was facially constitutional with two caveats: 1) "that the State will continue to provide school funding aid during this and the next two years at the levels required by SFRA's formula each year"; and 2) a mandated review of the SFRA formula's weights and other operative parts will occur after three years of implementation and every three years thereafter to ensure that students were receiving a thorough and efficient education. Id. at 146. The Court also rejected the Special Master's recommendation that supplemental funding be continued for the Abbott districts until the first three-year evaluation, thereby placing great weight on the quality of that evaluation.

72. The Court recognized in Abbott XX, that the Adequacy Budget, as defined by SFRA, provides the amount of school funding that would assure a constitutionally adequate education. This was because the Adequacy Budget supplied funding sufficient to educate students to the CCCS standards and to fund extracurricular and co-curricular activities necessary to provide a thorough and efficient education. Id. at 153.

**c. JCBOE's School Funding Post-SFRA Passage**

73. Since SFRA was enacted, JCBOE's Adequacy Budget has been steadily rising.

74. The JCBOE's Adequacy budget since SFRA was implemented in the 2008-09 school year through the 2018-19 school year, represented as a line graph, is as follows:



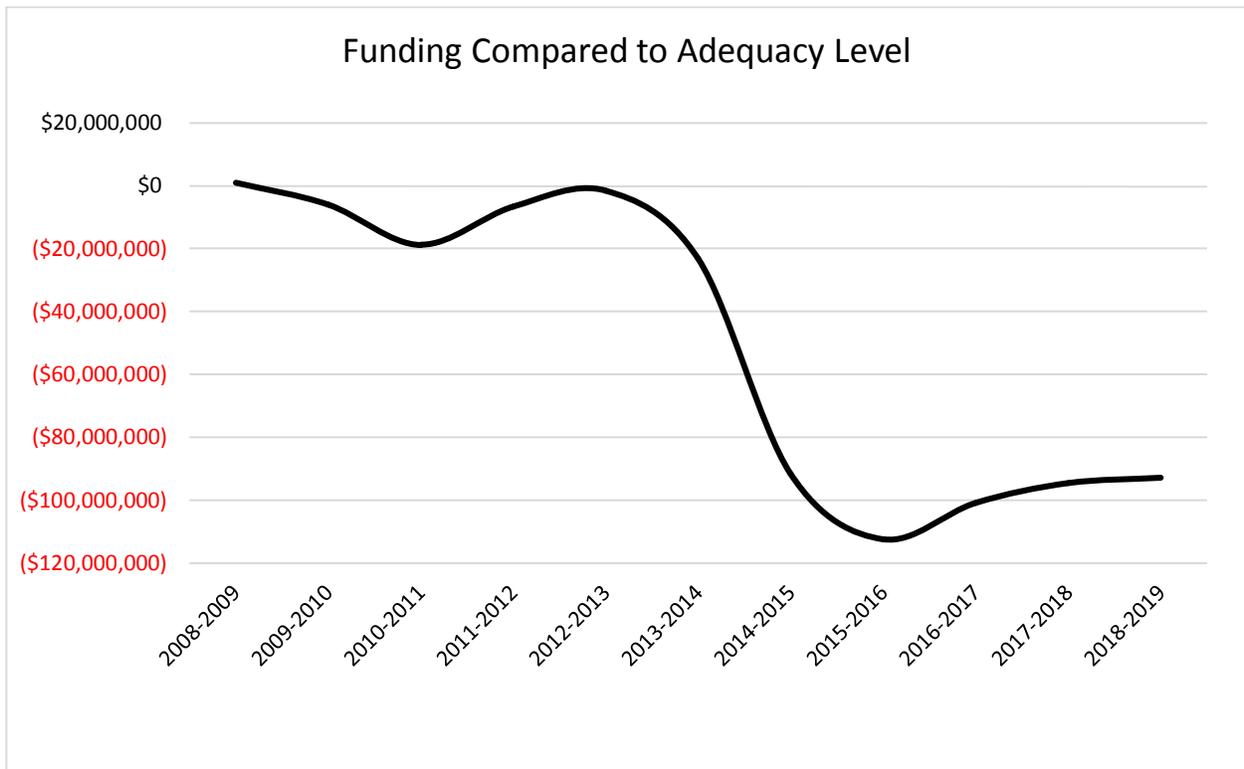
See Wyns Cert., ¶ 144.

75. While JCBOE's Adequacy Budget has been rising steadily, its funding level has not kept up and the gap between the two has increased dramatically. Since, as indicated, the Adequacy Budget represents the amount necessary for JCBOE to provide its students with a thorough and efficient education, JCBOE has been unable to satisfy its students' fundamental constitutional rights.

76. JCBOE received funding at its Adequacy Budget level only in the first year SFRA was implemented. Id. at ¶ 15.

77. During the years since, but for 2012-13, JCBOE has been consistently underfunded and substantially below adequacy. During that entire time, JCBOE also was under State control, with local control only being restored on October 18, 2018.

78. The line graph below depicts the changes in JCBOE’s funding compared to its Adequacy Budget, demonstrating whether JCBOE was “above” or “below” adequacy in terms of SFRA funding:



Id. At 146.

79. State education aid for 2010-11 was reduced more than it had been in the previous year, resulting in school districts receiving approximately \$1.6 billion less than SFRA would have provided if fully funded. See Abbott v. Burke, 206 N.J. 332, 345 (2011) (“Abbott XXI”).

80. As a result of this cut in state aid, the Abbott plaintiffs filed a motion to compel the State to comply with Abbott XX and fully fund SFRA, leading to the Supreme Court's decision in Abbott XXI.

81. In Abbott XXI, the Supreme Court ultimately held that the failure to fully fund SFRA caused significant harm to the students in Abbott districts and that such cuts violated those students' constitutional right to receive a thorough and efficient education. Id. At 341.

82. Consequently, it ordered that the SFRA formula be fully funded for the 2011-2012 school year as to the 31 former Abbott/SDA Districts. Id. At 376.

83. Since the Supreme Court's ruling in Abbott XXI, which reiterated that school funding must be in line with the formula set forth in SFRA in order for students to have a chance to receive a thorough and efficient education, the JCBOE public schools have been funded below the Adequacy Budget level and, therefore, at a level below that which is necessary to provide a thorough and efficient education. See Wyns Cert., ¶ 15.

84. There are four interacting reasons for that: (i) JCBOE has never been able to raise an amount anywhere near its LFS, SFRA's formulaic amount, thereby resulting in a large and growing local levy gap; (ii) JCBOE's unrealistic and growing LFS reduces the amount of state equalization aid to which JCBOE is entitled under SFRA's formula; (iii) the State has consistently failed to fully fund the SFRA state aid formula; and (iv) the three-year evaluation process designed to ensure that SFRA was actually delivering the resources necessary for JCBOE and other students to receive a through and efficient education has been largely a paper exercise with the entire process, including the resulting report, missing the scheduled deadlines by a large and growing margin.

85. Between the 2008-09 school year, the school year SFRA was implemented, and the 2019-20 school year, the Adequacy Budget for JCBOE's schools has increased by more than thirty one percent (31%) under SFRA. Id. at ¶ 20.

86. During that same time period, JCBOE's LFS has increased nearly one hundred and forty-two percent (142%), causing a commensurate reduction in its entitlement to state Equalization Aid. Id. at ¶ 21.

87. Because of the confluence of a number of factors, including: 1) an increasing Adequacy Budget, 2) the reduction in Equalization Aid to JCBOE, 3) the fact that the increases in Adjustment Aid are capped at 102% of the 2007-08 funding, and 4) the cap placed on JCBOE's ability to increase its local levy to support increases in its LFS, JCBOE has fallen further below adequacy and the constitutional level of funding necessary to provide a thorough and efficient education to the students of JCBOE. Id. at ¶ 24.

88. JCBOE has increased its local revenue as permitted by SFRA and the local levy has increased between 2008-09 and 2019-20 by more than fifty eight percent (58%), almost double the percentage increase in its Adequacy Budget. Id. at ¶ 23.

89. However, as set forth above, SFRA's two percent property tax cap, only recently removed, has constrained the speed with which JCBOE can increase its local revenue to provide funding consistent with its LFS. Id. at ¶ 26.

90. The JCBOE's Adequacy Budget for the 2017-18 school year, pursuant to N.J.S.A. 18A:7F-51, was \$584,758,085. Id. at ¶ 116.

91. Pursuant to the SFRA formula, JCBOE's LFS for the 2017-18 school year was \$370,261,455. Id. at ¶ 118.

92. Therefore, also pursuant to SFRA, JCBOE was entitled to receive \$214,496,630 in Equalization Aid, for the 2017-18 school year, representing the difference between the Adequacy Budget and the LFS. Id. at ¶ 117.

93. However, in the 2017-18 school year JCBOE contributed \$116,692,448 toward its LFS. Id. at ¶ 119.

94. Consequently, there was a local levy gap in the 2017-18 school year of \$253,569,007. Id. at ¶ 120.

95. JCBOE was entitled to receive \$158,883,988 in Adjustment Aid and \$125,411 in Educational Adequacy Aid for the 2017-18 school year, reducing its local levy gap by these amounts. Id. at ¶ 121.

96. For the 2017-18 school year, JCBOE was, therefore, \$94,559,608 “below adequacy” due to the local levy gap not being filled by Adjustment Aid and Educational Adequacy Aid. Id. at ¶ 122.

97. However, in the 2017-18 school year overall SFRA aid for Jersey City was reduced below the entitlement amounts required above under SFRA by \$8,375,597, increasing the amount the district was actually “below adequacy” to \$101,713,919, an amount larger than that shown in the preceding paragraph. Id. at ¶ 123.

98. \$1,221,286 of the overall reduction in aid above was in Transportation Aid which is not considered in this calculation. Id. at ¶ 124.

99. As a result, JCBOE had to reduce expenditures to balance its budget.

100. The JCBOE’s Adequacy Budget for the 2018-19 school year, pursuant to N.J.S.A. 18A:7F-51, was \$590,163,255. Id. at ¶ 133.

101. Pursuant to the SFRA formula, JCBOE's LFS for the 2018-19 school year was \$398,895,043. Id. at ¶ 135.

102. Consequently, also pursuant to SFRA, JCBOE was entitled to receive \$191,268,212 in Equalization Aid, for the 2018-19 school year. Id. at ¶ 134.

103. In the 2018-19 school year, JCBOE contributed \$124,367,357 toward its LFS. Id. at ¶ 136.

104. As a result, there was a local levy gap in the 2018-19 school year of \$274,527,686. Id. at ¶ 137.

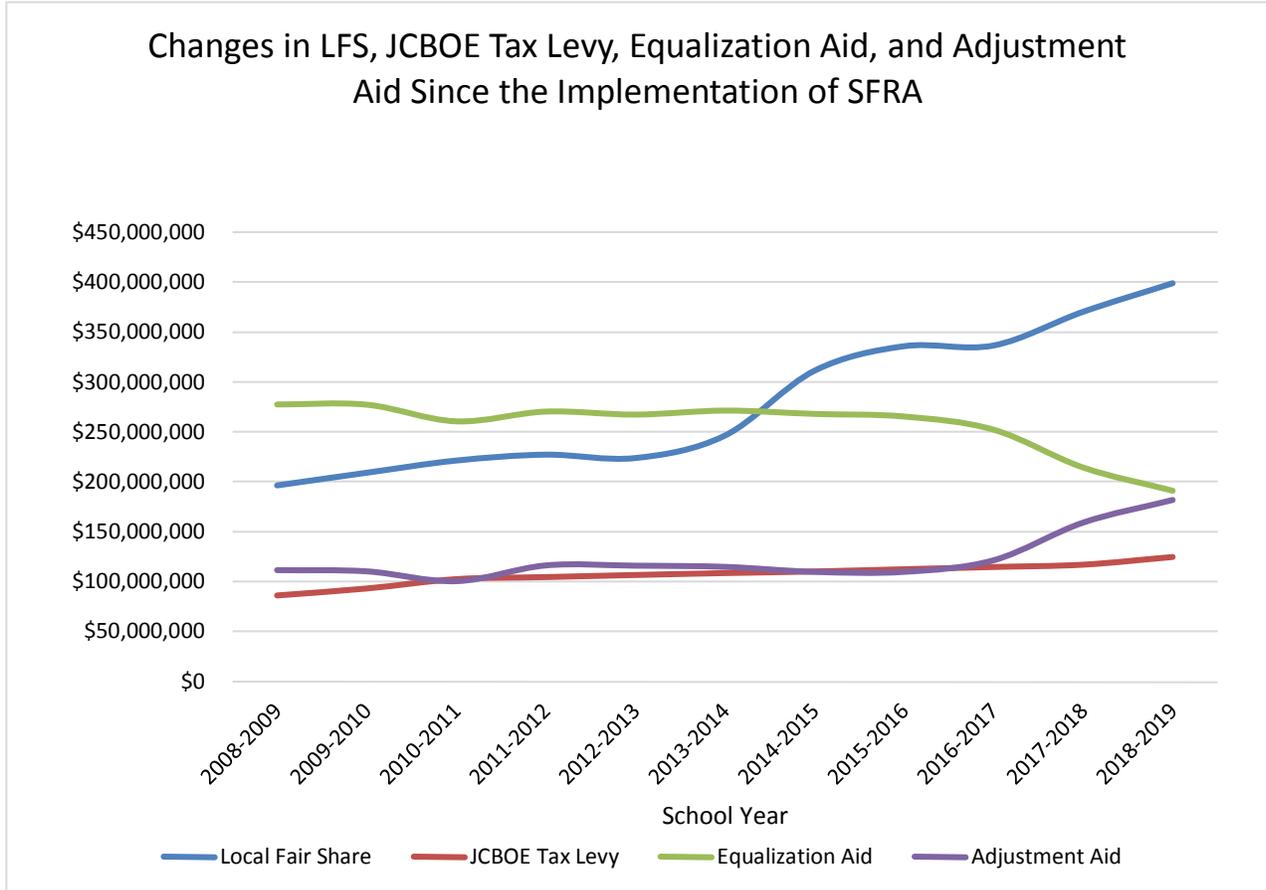
105. JCBOE was entitled to receive \$181,607,480 in Adjustment Aid and \$125,411 in Educational Adequacy Aid for the 2018-19 school year reducing its local levy gap by these amounts. Id. at ¶ 138.

106. For the 2018-19 school year, therefore, Jersey City was \$92,794,795 "below adequacy" due to the local levy gap not being filled by Adjustment Aid and due to receiving less state aid than required pursuant to SFRA. Id. at ¶ 139.

107. However, in the 2018-19 school year overall SFRA aid for JCBOE was again reduced below the entitlement amounts required under SFRA by \$10,954,857, increasing the amount the district was actually "below adequacy" to \$103,749,652, an amount larger than that shown in the preceding paragraph, resulting in Jersey City having to reduce expenditures to balance its budget. Id. at ¶ 140.

108. The graph below demonstrates the changes in JCBOE's LFS, the amounts JCBOE contributed toward the LFS, the amount of Equalization Aid JCBOE received, and the amount of

Adjustment Aid it received between the 2008-09 school year and the 2018-19 school year:



Id. at ¶ 145.

109. From the 2009-2010 school year through the 2018-2019 school year, JCBOE has been funded at a cumulative level more than \$574,772,516 below the Adequacy Budget level, and therefore, below that which was necessary for it to provide a thorough and efficient education. Id. at ¶ 142.

110. During this time, JCBOE was under State control necessitating school funding decisions to be made and/or approved by the State monitor.

111. Not only has the Adequacy Budget not been fully funded since SFRA's second year of implementation, but SFRA Defendants have failed to provide full state aid funding to JCBOE

in the 2017-18 school year in the amount of \$8,375,597 and in the 2018-19 school year in the amount of \$10,954,857. Id. at ¶ 143.

112. The phase-out of Adjustment Aid will add greatly to the negative impact on the students of JCBOE.

113. In the 2008-2009 school year, the first year SFRA was implemented, actual classroom spending per JCBOE pupil was \$10,000.

114. Budgeted classroom spending per pupil for the 2017-18 school year was \$10,787.00, only a 7.87% increase despite the fact that JCBOE's 2017-18 Adequacy Budget increased by 23.4% over its 2008-09 Adequacy Budget. See Wynn Cert., ¶ 125.

115. As a result of JCBOE's schools being historically funded below adequacy, JCBOE's teacher and staffing levels are out of compliance with the SFRA modeling as established in the Report on the Cost of Education. See Exhibit A.

116. In the 2018-19 school year, SFRA models provide that JCBOE should have 7.57 librarians/media specialists spread among all of its high schools.

117. However, due to funding below the Adequacy Budget level, JCBOE only employed 4 librarians/media specialists prior to the aforementioned cuts taking effect, which equates to 47.2% below the SFRA models.

118. In the 2018-19 school year, SFRA models provide that JCBOE should have a total of 34.11 technology specialists employed in its high schools.

119. However, due to funding below the Adequacy Budget level, JCBOE employed only 29 technology specialists in its high schools, which equates to 15.0% below the SFRA models.

120. In the 2018-19 school year, SFRA models provide that JCBOE should have a total of 18.36 directors/supervisors employed in its high schools.

121. However, due to funding below the Adequacy Budget level, JCBOE employed only 5 directors/supervisors in its high schools, which equates to 72.8% below the SFRA model.

122. In the 2018-19 school year, SFRA models provide that JCBOE should have a total of 42.82 reading specialists/reading recovery teachers employed at its high schools.

123. However, due to funding below the Adequacy Budget level, JCBOE employs no individuals in these positions.

124. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 867.03 teachers in its middle schools.

125. However, due to funding below the Adequacy Budget level, JCBOE employed 468.22 teachers in its middle schools, which equates to 46.0% below the SFRA model.

126. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 library/media specialists in its middle schools.

127. However, due to funding below the Adequacy Budget level, JCBOE employed only 9.33 library/media specialists in its middle schools, which equates to 51.1% below the SFRA model.

128. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 technology specialists in its middle schools.

129. However, due to funding below the Adequacy Budget level, JCBOE employed only 7.33 technology specialists in its middle schools, which equates to 61.6% below the SFRA model.

130. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 47.77 guidance counselors in its middle schools.

131. However, due to funding below the Adequacy Budget level, JCBOE employed only 20.33 guidance counselors in its middle schools, which equates to 57.4% below the SFRA model.

132. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 nurses in its middle schools.

133. However, due to funding below the Adequacy Budget level, JCBOE employed only 9.33 nurses in its middle schools, which equates to 51.1% below the SFRA model.

134. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 media aides in its middle schools.

135. However, due to funding below the Adequacy Budget level, JCBOE employed only 5.33 media aides in its middle schools, which equates to 72.1% below the SFRA model.

136. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 57.32 clerical/data entry staff in its middle schools.

137. However, due to funding below the Adequacy Budget level, JCBOE employed only 29.00 clerical/data entry staff in its middle schools, which equates to 49.4% below the SFRA model.

138. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 principals in its middle schools.

139. However, due to funding below the Adequacy Budget level, JCBOE employed only 10.33 principals in its middle schools, which equates to 45.9% below the SFRA model.

140. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 19.11 assistant principals in its middle schools.

141. However, due to funding below the Adequacy Budget level, JCBOE employed only 7.33 assistant principals in its middle schools, which equates to 61.6% below the SFRA model.

142. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 62.78 security guards in its middle schools.

143. However, due to funding below the Adequacy Budget level, JCBOE employed only 39.54 security guards in its middle schools, which equates to 37.0% below the SFRA model.

144. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 131.03 reading specialists/reading recovery teachers in its middle schools.

145. However, due to funding below the Adequacy Budget level, JCBOE employed only 50.63 reading specialists/reading recovery teachers in its middle schools, which equates to 61.4% below the SFRA model.

146. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 6.84 social workers in its middle schools.

147. However, due to funding below the Adequacy Budget level, JCBOE employed only 4 social workers in its middle schools, which equates to 41.5% below the SFRA model.

148. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 28.15 librarians/media specialists in its elementary schools.

149. However, due to funding below the Adequacy Budget level, JCBOE employed only 27.24 librarians/media specialists in its elementary schools, which equates to 3.2% below the SFRA model.

150. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 28.15 technology specialists in its elementary schools.

151. However, due to funding below the Adequacy Budget level, JCBOE employed only 19.24 technology specialists in its elementary schools, which equates to 31.7% below the SFRA model.

152. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 28.15 nurses in its elementary schools.

153. However, due to funding below the Adequacy Budget level, JCBOE employed only 27.24 nurses in its elementary schools, which equates to 3.2% below the SFRA model.

154. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 126.58 instructional aides in its elementary schools.

155. However, due to funding below the Adequacy Budget level, JCBOE employed only 109.43 instructional aides in its elementary schools, which equates to 13.5% below the SFRA model.

156. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 253.15 reading specialists/reading recovery teachers in its elementary schools.

157. However, due to funding below the Adequacy Budget level, JCBOE employed only 223.85 readings specialists/reading recovery teachers in its elementary schools, which equates to 11.6% below the SFRA model.

158. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 28.15 media aides in its elementary schools.

159. However, due to funding below the Adequacy Budget level, JCBOE employed only 17.24 media aides in its elementary schools, which equates to 38.7% below the SFRA model.

160. In the 2018-19 school year, SFRA models provide that JCBOE should have employed a total of 16.64 social workers in its elementary schools.

161. However, due to funding below the Adequacy Budget level, JCBOE employed only 6.2 social workers in its elementary schools, which equates to 62.7% below the SFRA model.

162. As the above demonstrates, JCBOE is currently significantly understaffed such that the SFRA modeling is not met by JCBOE.

163. Because JCBOE is already understaffed, it does not have the resources necessary to provide a thorough and efficient education to its students and any future reductions in funding will likely necessitate the elimination of teaching and support staff, which will only move the students of JCBOE further away from receiving their constitutional right to a thorough and efficient education.

**d. Recent Amendments to SFRA Causing Jersey City to Fall Further Below Adequacy.**

164. Notwithstanding that the public schools of Jersey City were operating at \$103.7 million less in funding than its Adequacy Budget required in the 2018-19 school year, the State enacted and began to implement amendments to SFRA, effective as of July 24, 2018 (the “Amendments”), that will substantially worsen JCBOE’s financial situation.

165. Pursuant to the Amendments, set forth, in part, at N.J.S.A. 18A:7F-68(b), the Adjustment Aid that JCBOE receives from SFRA Defendants is being phased out over a six-year period as follows:

- a. A 13 percent reduction in the 2019-2020 school year;
- b. A 23 percent reduction in the 2020-2021 school year;
- c. A 37 percent reduction in the 2021-2022 school year;
- d. A 55 percent reduction in the 2022-2023 school year;
- e. A 76 percent reduction in the 2023-2024 school year; and
- f. A 100 percent reduction in the 2024-2025 school year.

166. These reductions, which are estimated to result in a total cumulative reduction of school aid of at least \$795 million to Jersey City by the 2024-2025 school year, will cause JCBOE to fall further below adequacy. See *Wyns Cert.*, ¶ 149.

167. As a result of the 13 percent reduction in Adjustment Aid for the 2019-20 school year, which is a reduction in funding from the 2018-19 school year of \$27,192,633 and of \$38,147,490 from the version of SFRA which was held to be constitutional in Abbott XX, JCBOE will be forced to take drastic steps to balance the budget which will directly affect JCBOE's ability to comply with CCCS. Id. at ¶ 150.

168. Until JCBOE recently received notice of the actual amount of cuts to Adjustment Aid for the 2019-20 school year totaling \$27,192,633, it had been estimated that these cuts would only amount to approximately \$14,000,000.

169. The thirteen percent cut in Adjustment Aid equates to a reduction in JCBOE's total state aid by 6.6%. Id. at ¶ 151.

170. The JCBOE's Adequacy Budget for the 2019-20 school year pursuant to N.J.S.A. 18A:7F-51, was \$622,876,777. Id. at ¶ 152.

171. Pursuant to SFRA, JCBOE was entitled to receive \$148,837,309 in Equalization Aid, for the 2019-20 school year. Id. at ¶ 153.

172. Pursuant to the SFRA formula, JCBOE's LFS for the 2019-20 school year was \$474,039,468. Id. at ¶ 154.

173. For the 2019-20 school year, JCBOE plans to contribute \$136,504,704 toward its LFS. This is a 9.76% increase over the 2018-19 contribution. Id. at ¶ 155.

174. Nonetheless, even after this significantly increased local contribution, there was a local levy gap for the 2019-20 school year of \$337,534,764. Id. at ¶ 156.

175. JCBOE was entitled to receive \$181,981,470 in Adjustment Aid and \$125,411 in Educational Adequacy Aid for the 2019-20 school year reducing its local levy gap by these amounts. Id. at ¶ 157.

176. For the 2019-20 school year, Jersey City was \$155,427,883 “below adequacy” due to the local levy gap not being filled by Adjustment Aid and Educational Adequacy Aid. Id. at ¶ 158.

177. Additionally, JCBOE’s charter school tuition was increased by \$6.2 million for the 2019-20 school year due to increased charter school enrollment, further reducing the amount of funds available to JCBOE non-charter schools.

178. JCBOE cannot tax its way out of the local levy gap that will exist as a result of the phase out of Adjustment Aid.

179. Based upon 2019-20 data and the 2019-20 level of Adjustment Aid, in order for JCBOE to fund its schools at the level required by the Adequacy Budget, JCBOE would have to increase its local levy by \$155,427,883, or nearly one hundred fourteen percent (114%) of its 2019-20 level. See Wyns Cert., ¶ 161.

180. Due to JCBOE’s past inability to increase local revenue at a rate necessary to meet its LFS obligations because of SFRA’s 2% cap, it is impossible now for JCBOE to fund its LFS to enable it to reach adequacy, as Jersey City would have to increase its property tax rates by 33 percent. Id. at ¶ 162.

181. Even if JCBOE were able to increase its tax rates to seek to raise higher levels of revenue to meet the LFS and Adequacy Budget, the percentage increase in taxes would likely have devastating effects on the tax base, preventing these increased revenues from being realized.

182. This inability to raise increased levels of local revenue through higher tax rates is referred to as “municipal overburden” in the Abbott line of cases.

183. In Abbott XX, the Court specifically noted that the plaintiffs were concerned with municipal overburden, but it held that this issue was alleviated due, in part, to Adjustment Aid.

184. As these figures reflect, by amending SFRA to phase out Adjustment Aid, JCBOE will fall further below the Adequacy Budget as calculated by SFRA, contrary to the Orders of the Supreme Court in Abbott XX and XXI.

185. JCBOE’s below adequacy funding has directly impacted its students, leading to a per weighted-pupil shortfall for the 2019-20 school year equaling \$3,370.00 and to a per weighted-pupil shortfall in funding existing in each year since the SFRA was implemented other than in the initial year of implementation, the 2008-09 school year. See Wyns Cert., ¶ 159.

186. The below chart reflects how JCBOE’s below adequacy funding has resulted in a shortfall in funding per weighted-pupil from the 2009-10 school year to the 2019-20 school year:

School Year	Weighted Enrollment	Adequacy Budget	Adequacy Budget/ Per Weighted Pupil	Adequacy Budget Funding	Adequacy Budget Funding/ Per Weighted Pupil	Shortfall	Short-fall/Per Weighted Pupil
2008-09	43,921	\$473,854,172	<b>\$10,789</b>	\$474,873,146	<b>\$10,812</b>	\$0	<b>\$0</b>
2009-10	43,624	\$486,315,450	<b>\$11,148</b>	\$480,344,364	<b>\$11,011</b>	\$5,971,086	<b>\$137</b>
2010-11	48,108	\$489,564,151	<b>\$10,176</b>	\$462,640,757	<b>\$9,617</b>	\$26,923,394	<b>\$560</b>
2011-12	43,395	\$497,534,646	<b>\$11,465</b>	\$490,855,850	<b>\$11,311</b>	\$6,678,796	<b>\$154</b>
2012-13	40,722	\$491,127,159	<b>\$12,060</b>	\$489,658,119	<b>\$12,024</b>	\$1,469,040	<b>\$36</b>
2013-14	41,366	\$517,593,230	<b>\$12,513</b>	\$494,363,390	<b>\$11,951</b>	\$23,229,840	<b>\$562</b>
2014-15	45,778	\$579,277,523	<b>\$12,654</b>	\$487,635,226	<b>\$10,652</b>	\$91,642,297	<b>\$2,002</b>
2015-16	46,875	\$601,290,845	<b>\$12,828</b>	\$488,786,917	<b>\$10,427</b>	\$112,503,928	<b>\$2,400</b>
2016-17	46,921	\$588,836,489	<b>\$12,550</b>	\$487,945,925	<b>\$10,399</b>	\$100,890,564	<b>\$2,150</b>
2017-18	46,426	\$584,758,085	<b>\$12,595</b>	\$483,044,166	<b>\$10,405</b>	\$101,713,919	<b>\$2,191</b>
2018-19	46,119	\$590,163,255	<b>\$12,797</b>	\$486,413,603	<b>\$10,547</b>	\$103,749,652	<b>\$2,250</b>
2019-20	46,126	\$622,876,777	<b>\$13,504</b>	\$467,448,894	<b>\$10,134</b>	\$155,427,883	<b>\$3,370</b>

Id. Wyns Cert., ¶ 160.

187. On March 20, 2019, JCBOE adopted and filed its tentative budget pursuant to N.J.S.A. 18A:7F-5 and 18A:7F-6 for the 2019-20 school year. See Wyns Cert., Ex. X

188. As set forth in the tentative budget, JCBOE will have a tax levy equaling \$134,854,704.00, which includes a ten percent (10%) increase in JCBOE’s school tax, representing a two percent (2%) increase in property taxes.

189. The tentative budget also provides that JCBOE will receive \$381,497,338 in state aid for the 2019-20 school year.

190. Along with adopting the tentative budget, JCBOE made a preliminary budget presentation on March 20, 2019. See Wyns Cert., Ex. X.

191. The 2019 Preliminary Budget Presentation, together with the certified tentative budget, indicates the cuts that JCBOE anticipated making to balance its budget as a result of the State's cuts to Adjustment Aid as well as cuts resulting from being funded below adequacy.

192. Following this budget presentation, however, JCBOE was able to take a combination of steps to ensure that necessary and vital instructional staff were not let go in the upcoming school year.

193. Notwithstanding JCBOE's efforts to ensure that vital instructional staff are not laid off this year, with the elimination of Adjustment Aid and JCBOE's practical inability to increase local revenue to satisfy LFS and fund its schools in an amount consistent with the Adequacy Budget calculation in SFRA, SFRA Defendants cannot provide the students of JCBOE with a constitutionally sufficient education.

194. Increased funding, not a reduction, is needed in Jersey City in order for JCBOE's students to receive a thorough and efficient education.

**e. Newly Enacted Payroll Tax In Jersey City**

195. In conjunction with amending SFRA to, among other things, eliminate Adjustment Aid to districts such as JCBOE, the Legislature also amended N.J.S.A. 40:48C-15, effective July 24, 2018, to permit any municipality with a population exceeding 200,000, which includes Jersey City, to enact an ordinance which would permit the collection of an employer payroll tax not to

exceed 1% (the “Payroll Tax Statute”). Attached hereto as **Exhibit B** is a true and correct copy of the Payroll Tax Statute.

196. The Payroll Tax Statute was also amended to provide that, if any municipality subject to the act had a median household income of \$55,000.00 or greater, than all of the employer payroll tax collected would be deposited into a trust fund to be used exclusively for school purposes. N.J.S.A. 40:48C-15(d)(1).

197. This median household income provision is applicable only to Jersey City currently, as no other municipality has both a population in excess of 200,000 and a median household income of \$55,000.00 or greater, as recognized by the Statement of the Assembly Bill introduced on June 11, 2018.

198. The Statement of the Assembly Bill also specifically stated that “[t]he bill would help offset certain reductions in State school aid that may be in effect after State fiscal year 2018, as is currently being considered by the Legislature in the form of Senate Bill No. 2 of 2018-2019.”

199. The Senate Bill No. 2 referenced in the Statement of the Assembly Bill is the recently enacted amendment to SFRA that, among other things, eliminates Adjustment Aid to JCBOE.

200. Following the passage of the Payroll Tax Statute, Jersey City adopted Ordinance 18-133 implementing a 1% employer payroll tax to take effect on January 1, 2019 (the “Payroll Tax Ordinance”). Attached hereto as **Exhibit C** is a true and correct copy of the Payroll Tax Ordinance.

201. The Payroll Tax Statute and the Payroll Tax Ordinance contain no guaranteed revenue amount, nor do they provide that the revenue must be of a sufficient amount to fully offset JCBOE’s loss of Adjustment Aid as a result of recent amendments to SFRA.

202. A review of data regarding the levels of state school aid that JCBOE will receive in the 2019-20 school year makes it possible to determine when the payroll tax education trust fund may be depleted as a result of reductions in state aid. See Wyns Cert., ¶ 177.

203. If the payroll tax generated revenue of \$40 million per year, which would require a payroll subject to the ordinance of \$4 billion, JCBOE's trust fund would be depleted by the 2021-22 school year, and in fact would be negative in that year. Id. at ¶ 180.

204. The 2021-22 school year is three years before the complete phase out of Adjustment Aid as set forth in the recent amendments to SFRA.

205. If the payroll tax generated revenue of \$50 million per year, which would require a payroll subject to the ordinance of \$5 billion, JCBOE's trust fund would be depleted by the 2021-22 school year. Id. at ¶ 181.

206. The 2021-22 school year is three years prior to the complete phase out of Adjustment Aid as set forth in recent amendments to SFRA.

207. If the payroll tax generated revenue of \$60 million per year, which would require a payroll subject to the ordinance of \$6 billion, JCBOE's trust fund would be depleted by the 2022-23 school year, and in fact would be negative in that year. Id. at ¶ 182.

208. The 2022-23 school year is two years prior to the complete phase out of Adjustment Aid as set forth in recent amendments to SFRA.

209. If the payroll tax generated revenue of \$70 million per year, which would require a payroll subject to the ordinance of \$7 billion, JCBOE's trust fund would be depleted by the 2022-23 school year, and in fact would be negative in that year. Id. at ¶ 183.

210. The 2022-23 school year is two years prior to the complete phase out of Adjustment Aid as set forth in recent amendments to SFRA.

211. If the payroll tax generated revenue of \$80 million per year, which would require a payroll subject to the ordinance of \$8 billion, JCBOE's trust fund would be depleted by the 2023-24 school year, and in fact would be negative in that year. Id. at ¶ 184.

212. The 2023-24 school year is one year prior to the complete phase out of Adjustment Aid as set forth in recent amendments to SFRA.

213. While Jersey City has certified that it will have collected sufficient revenue from the payroll tax to provide JCBOE with \$27 million for the 2019-20 school year, JCBOE currently has no knowledge as to the amount of revenue actually collected by Jersey City from the payroll tax.

214. While payroll tax revenue appears sufficient to cover the loss of Adjustment Aid for the 2019-20 school year, it is almost certain that the payroll tax revenue will be insufficient to offset the increasing phase out of Adjustment Aid even before the phase out is complete.

215. Additionally, while the Statement of the Assembly Bill indicates that the Payroll Tax Statute was enacted to offset losses in Adjustment Aid as a result of recent amendments to SFRA, the Payroll Tax Statute actually provides that revenue from the tax is to be used to cover loss of all state school aid, not just Adjustment Aid. N.J.S.A. 40:48C-15(1)(d)(2).

216. As such, to the extent there are reductions in other forms of state school aid, payroll tax revenue will not replace Adjustment Aid in dollar for dollar exchange.

217. An additional limitation on the capacity of payroll tax revenue to offset losses in Adjustment Aid to JCBOE is that, unlike Adjustment Aid, charter schools in Jersey City are entitled to revenue generated by the payroll tax. N.J.S.A. 40:48C-15(d)(1).

218. Regardless, the revenue generated by the payroll tax cannot replace Adjustment Aid losses to non-charter public schools in JCBOE on a dollar to dollar basis since the payroll tax revenue will be shared with charter schools under the ordinance

219. Therefore, it is virtually certain that payroll tax revenue will be less than the loss of Adjustment Aid every year.

220. This estimated payroll tax collection is far below the amount of Adjustment Aid that JCBOE will lose as a result of the recent amendments to the SFRA, to say nothing of the shortfall to JCBOE's Adequacy Budget.

221. Furthermore, because JCBOE's tentative budget was submitted on March 20, 2019, prior to any payroll tax revenue being collected or distributed to JCBOE, JCBOE cannot include any payroll tax revenue in its tentative 2019-20 budget, while the budget will reflect the loss of over \$27 million in Adjustment Aid.

222. The Payroll Tax Statute and Ordinance are the subject of on-going litigation, proceeding under the caption Mack-Cali Realty Corp., et al. v. State of New Jersey, et al., Docket No.: HUD-L-4903-18.

223. In that matter, the trial court granted the State's motion to dismiss, effectively permitting the payroll tax to go into effect in Jersey City.

224. However, this decision has been appealed, further calling into question whether JCBOE will receive funding from the payroll tax in the near future.

225. JCBOE has the potential to ensure that its students receive the best possible opportunity for a quality education, and to aid them in becoming productive members of society, but the current public-school financing system as recently amended ensures that JCBOE efforts will go unrealized.

## **2. Facts Pertaining to Claims Related to the EFCFA**

226. As early as the Robinson line of cases, the courts have recognized that in addition to providing sufficient funding for educational instruction, safe, modern, and adequate facilities are also necessary to provide the thorough and efficient education mandated by the Constitution.

227. In the very first Robinson v. Cahill opinion, the Court recognized the interplay between facilities and a student's ability to take full advantage of the education being imparted within that facility, stating "[w]e have discussed the existing scene in terms of current operating expenses. The State's obligation includes as well the capital expenditures without which the required educational opportunity could not be provided." 62 N.J. 473, 520 (1973).

228. In Abbott IV, the Court struck down the CEIFA as unconstitutional because, *inter alia*, "[t]he statute neglects to consider the dire need for facilities improvement." 149 N.J. at 186.

229. Of the educational import of adequate school facilities, the Court in Abbott IV held that "we cannot expect disadvantaged children to achieve when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them." Id. at 188.

230. Forecasting the Court's next decision in the Abbott line of cases, the Abbott IV Court stated that "[t]he quality of facilities cannot depend on the district's willingness or ability to raise taxes or to incur debt." Id.

231. In the year following Abbott IV, the Court issued its decision in Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V") wherein the Court ordered several remedies be put into effect in order to ensure that students in the then Abbott Districts receive a thorough and efficient education.

232. After highlighting the deplorable facilities existing in the Abbott Districts, the Court in Abbott V required that the State fully fund the maintenance and construction of

educational facilities in the Abbott Districts, stating, in pertinent part, that “**any funding formula that does not fund the complete cost of remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts or that does not fully fund the construction of any new classrooms needed to correct capacity deficiencies will not comport with the State’s constitutional mandate to provide facilities adequate to ensure a thorough and efficient education.**” 153 N.J. at 524 (emphasis added).

233. The Court reiterated the requirement that the State fund all of the costs of necessary facilities remediation and construction in the Abbott districts (now known as the SDA districts) in its decision in Abbott v. Burke, 164 N.J. 84, 88 (2000).

234. To comply with these orders, the Legislature enacted the Educational Facilities Construction and Financing Act (“EFCFA”), N.J.S.A. 18A:7G-1 et seq.

235. As set forth in the legislative findings accompanying the EFCFA, “[t]he Constitution of the State of New Jersey requires the Legislature to provide for the maintenance and support of a thorough and efficient system of free public schools and this legislative responsibility includes ensuring that students are educated in physical facilities that are safe, healthy, and conducive to learning.” N.J.S.A. 18A:7G-2(a).

236. The legislative findings further state that:

Educational infrastructure inadequacies are greatest in the SDA districts where maintenance has been deferred and new construction has not been initiated due to concerns about cost. To remedy the facilities inadequacies of the SDA districts, the State must promptly engage in a facilities needs assessment and 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 school facilities efficiency standards in the SDA districts.

N.J.S.A. 18A:7G-2(c).

237. In order to carry out the State's constitutional mandate of fully funding all of the costs of necessary facilities remediation and construction in SDA districts as well as the other requirements set forth in the EFCFA, the Legislature created the New Jersey Schools Development Authority ("SDA"). N.J.S.A. 52:18A-237.

238. To comply with Abbott V and Abbott VII, the SDA tasked with financing and constructing projects in SDA districts' Long Range Facilities Plans ("LRFP") approved by the DOE.

239. A LRFP "details the district's school facilities needs and the district's plan to address those needs for the ensuing five years." N.J.S.A. 18A:7G-4(a).

240. The LRFPs are to be amended at least once every five years to update enrollment projections, building capacities, and health and safety conditions. Id.

241. JCBOE last submitted a LRFP in 2005, with an amendment to same having been approved by the DOE in 2014. Attached hereto as **Exhibit D** is a true and exact copy of JCBOE's 2014 LRFP Amendment and 2005 LRFP Summary.

242. JCBOE's approved LRFP, as amended in 2014, consists of maintenance, remediation, and construction projects totaling \$1,388,681,525.00.

243. Of the approved amount of \$1,388,681,525.00, the SDA has only financed approximately \$361,064,210.97 worth of construction on the maintenance, remediation, and construction of facilities approved and in dire need in JCBOE.

244. There are currently no SDA funded projects under design and/or construction in JCBOE.

245. As set forth in the approved LRFP, amended in 2014, the DOE approved JCBOE's proposal to construct fifteen (15) new schools, twelve (12) new instructional buildings, and purchase and/or lease five (5) new sites for construction.

246. The SDA is required to fully fund the construction and acquisition of these projects.

247. Former SDA CEO Charles McKenna testified in May 2018 that the SDA has **no** funds to commence any new projects identified in the DOE-approved LRFPs.

248. As a result of Defendants' failure to fund JCBOE's much needed facilities maintenance, repairs, and construction, JCBOE has been forced to use a portion of its Adequacy Budget, which is meant to be used solely for operational costs such as staff and programs, towards its capital expenditures.

249. For example, JCBOE has expended local funds to renovate two old buildings, PS20 and PS31, to provide temporary early childhood education facilities until the SDA funds the construction of new early childhood education facilities which are badly needed in JCBOE.

250. These repairs, maintenance, and construction costs are necessary largely due to the age JCBOE's schools.

251. Twenty one percent (21%) of JCBOE's schools are over 100 years old.

252. Fully fifty percent (50%) of JCBOE's schools are more than 75 years old.

253. Due in part to the age of JCBOE's schools, many are in disrepair and require that immediate action be taken to ensure that JCBOE's students are attending school in a safe and healthy environment that is not overcrowded.

254. For example, not one of the 40 school buildings in JCBOE's district can provide safe potable water for drinking due to lead being present in their pipes, forcing JCBOE to purchase water from outside private suppliers.

255. Additionally, at least ten (10) JCBOE schools need roof replacements, eight (8) need window replacements, at least seven (7) need their boilers replaced, at least one (1) needs its fire escape repair and/or replaced, numerous class rooms need to be renovated, and schools constructed.

256. These capital improvements have been approved but funding has not been provided as required by statute and Defendants' constitutional obligations.

257. Defendants' failure to comply with their constitutional obligations to fully fund the maintenance, repair, and construction of schools in JCBOE, as set forth above, is clear and has, and will continue to have, a negative effect on JCBOE's students' ability to receive a thorough and efficient education.

**LEGAL CLAIMS**  
**COUNT I**

**(Thorough and Efficient Education – SFRA is Unconstitutional As Applied)**

258. Plaintiffs repeat and restate the allegations in the foregoing paragraphs of the Complaint as if fully set forth herein.

259. The New Jersey Constitution provides, in pertinent part, that “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years old. N.J. Const. art. VIII, § 4, ¶ 1 (“Thorough and Efficient Clause”).

260. The Thorough and Efficient Clause of the New Jersey Constitution makes a thorough and efficient education a fundamental right for all New Jersey children, including JCBOE's students.

261. The Thorough and Efficient Clause provides that it is the State's obligation to ensure that the students of JCBOE receive a thorough and efficient education.

262. As set forth above, the legislative findings incorporated into SFRA state that the “formula established under [SFRA] is the product of a careful and deliberative process that first involved determining the educational inputs necessary to provide a high-quality education, including specifically addressing the supplemental needs of at-risk students and those with limited English proficiency (LEP), and a determination of the actual cost of providing those programs. The formula provides adequate funding that is realistically geared to the core curriculum content standards, **thus linking those standards to the actual funding needed to deliver that content.**” N.J.S.A. 18A:7F-44(i).

263. The SFRA is **only** constitutional to the extent that it ensures that the resources necessary for a thorough and efficient education, defined by CCCS, are provided. Abbott XX, 199 N.J. at 170.

264. As the statutory Adequacy Budget was developed to ensure that districts had the resources necessary to provide CCCS, funding for a thorough and efficient education must be at the Adequacy Budget level and any lesser amount of funding is violative of the Thorough and Efficient Clause.

265. The Supreme Court has held that former Abbott/SDA Districts, which include JCBOE, are entitled to special constitutional consideration.

266. While the State can meet its constitutional obligation of providing a thorough and efficient education to the students of New Jersey by delegating some of that obligation to local school districts, if any shortfalls exist in funding necessary to provide a thorough and efficient education, the obligation falls on the State to ensure sufficient funding. Robinson v. Cahill, 69 N.J. 133, 142 (1975).

267. Since 2009, the second year of SFRA implementation, JCBOE school funding has never matched its Adequacy Budget, meaning that since 2009, JCBOE has not received sufficient funding for the resources necessary to provide a thorough and efficient education. See Wyns Cert., ¶ 15.

268. The sum of JCBOE's Adequacy Budget deficit since 2009 exceeds half a billion dollars, all incurred while JCBOE was under State control. Id. at ¶ 142.

269. SFRA Defendants have failed to ensure that the students of JCBOE receive funding that, at a minimum, equals the Adequacy Budget and as such, has failed to ensure that the students of JCBOE have obtained a thorough and efficient education for the past ten (10) years, a time in which JCBOE was under State control.

270. While the Court in Abbott XX found SFRA facially constitutional, it recognized that there was "no absolute guarantee that SFRA will achieve the results desired by all. SFRA deserves the chance to prove in practice that, as designed, it satisfies the requirements of our constitution." 199 N.J. at 169.

271. JCBOE, however, continues to fall further below adequacy, with funding in JCBOE for the 2018-19 school year at \$103,713,919 below the Adequacy Budget and at \$157,077,833 below the Adequacy Budget for the 2019-20 school year. See Wyns Cert., ¶ 158.

272. Not only has JCBOE's Adequacy Budget not been fully funded since the 2008-09 school year, but also state aid to JCBOE has not been fully funded for several school years during this time period, namely in the 2010-11 school year (which resulted in the Abbott XXI decision), the 2017-18 school year, and the 2018-19 school year.

273. In the 2010-11 school year, JCBOE received \$26,835,520 less in funding than required under the SFRA formula, contributing to the failure of JCBOE to fund its schools at the Adequacy Budget level. See Wyns Cert., ¶ 54.

274. As a result of the Appropriations Acts enacted in the 2017-18 and 2018-19 school years, state aid has been reduced from what JCBOE should have received pursuant to SFRA. Id. at ¶¶ 123, 140

275. In the 2017-18 school year, JCBOE received \$8,375,597 less in funding than required under SFRA, contributing to a shortfall of JCBOE's funding in the amount of \$101,713,909 below adequacy for that school year. Id. at ¶ 123.

276. In the 2018-19 school year, JCBOE received \$10,954,857 less in funding than required under the SFRA, contributing to a shortfall of JCBOE's funding in the amount of \$103,749,652 below adequacy for the current school year. Id. at ¶ 140.

277. Due to these shortfalls in state aid, Defendants essentially replaced SFRA with an underfunded version of the statute, actions which have been found to violate the New Jersey Constitution. Abbott XXI, 206 N.J. at 360.

278. In addition to this shortfall in funding, Defendants have underfunded Extraordinary Aid since the SFRA's inception, resulting in a total shortfall of \$13,722,026, and only 62.8% of the required amount, from the 2008-09 through 2017-18 school years. See Wyns Cert., ¶ 169.

279. Extraordinary Aid is aid from the State that reimburses districts for special education expenses exceeding \$40,000 for an individual student. Abbott XX, 199 N.J. at 156.

280. For costs of special education exceeding \$40,000 per student for direct instructional and support services, SFRA mandates that the State reimburse the district ninety percent of the costs. Id. at 156-57.

281. For private out-of-district special education programs, SFRA requires that the State reimburse districts seventy-five percent of the costs exceeding \$55,000 per pupil. Id. at 157.

282. Since SFRA was enacted and implemented in the 2008-09 school year, however, Defendants have failed to fully reimburse JCBOE the costs expended for special education that it was required to provide, in violation of SFRA.

283. Specifically, Defendants have failed to fully reimburse JCBOE the costs expended for special education that it was required to provide in each of those six school years under SFRA resulting in a total shortfall for those school years of \$13,722,026 and only 62.8% of the required amount. See Wyns Cert., ¶ 169.

284. Based upon the reimbursement level for the 2017-18 school year of 50.12% and the Extraordinary Aid funding that is available in the State budget for FY 2019 and recommended for FY2020, it is expected that the reimbursement level for the 2018-19 and 2019-20 school years will be no more than 50% of the required level under SFRA. Id. at ¶ 170.

285. Defendants' failure relating to Extraordinary Aid has caused JCBOE to fall further below adequacy, thus contributing to Defendants' failure to assure that JCBOE students receive a thorough and efficient education.

286. As the Court in Abbott XXI held, former Abbott/SDA districts' "right to full funding is a constitutional mandate." 206 N.J. at 463.

287. In Abbott XX, when the Court authorized Defendants to replace the then current educational funding method with SFRA, it did not authorize "some underfunded version of SFRA" but instead required full funding. Abbott XXI, 206 N.J. at 360.

288. The Supreme Court has established that, if the State fails to fully fund the SFRA formula or changes the formula in a way that reduces funding to a former Abbott/SDA District,

the State bears a heavy burden of proof to demonstrate that those acts are compatible with its constitutional obligation to provide its students a thorough and efficient education.

289. As set forth above, Defendants have failed to ensure that the Adequacy Budget level of funding has been achieved in JCBOE.

290. As such, Defendants have failed to provide a thorough and efficient education to the students of JCBOE in violation of their constitutional mandate to do so.

291. Defendants' violation of the New Jersey Constitution has irreparably harmed the students of the JCBOE by failing to ensure funding at a level necessary to provide a thorough and efficient education, specifically the Adequacy Budget.

292. This harm will ultimately limit students' educational opportunities and irreversibly affect their long-term prospects for employment and their ability to be productive members of society.

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

- a. A declaration that SFRA Defendants have failed to provide necessary funding to JCBOE to enable it to reach its Adequacy Budget and thereby have precluded it from assuring its students a thorough and efficient education;
- b. A declaration that SFRA Defendants have failed to provide full funding to JCBOE for all state aid categories set forth in SFRA;
- c. A declaration that that SFRA Defendants have failed and continue to fail to provide a thorough and efficient education to the students of JCBOE's schools;
- d. A preliminary and permanent injunction enjoining SFRA Defendants from providing state aid in amounts below that which is required by SFRA to JCBOE;

- e. A preliminary and permanent injunction enjoining SFRA Defendants from reducing funding to JCBOE causing it to fall further below the Adequacy Budget;
- f. An order requiring Defendants to provide funding to JCBOE to enable it to fund its schools at the Adequacy Budget level;
- g. Attorneys' fees and costs of this action; and
- h. Such other and further relief as the Court determines to be just and appropriate.

## **COUNT II**

### **(Thorough and Efficient Education-Challenge to SFRA Amendments)**

293. Plaintiffs repeat and restate the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

294. To provide the funding necessary for a thorough and efficient education, school funding must be at the level set forth by the Adequacy Budget.

295. As set forth above, JCBOE has been "below adequacy" since the 2009-10 school year. See Wyns Cert., ¶ 15.

296. When the Supreme Court ruled that SFRA was facially constitutional in Abbott XX, the plaintiffs argued that SFRA failed to pass constitutional muster because it failed to account for municipal overburden in the former Abbott/SDA Districts. 199 N.J. at 165.

297. Municipal overburden, a concern in the Abbott line of cases since Abbott II and even in the Robinson v. Cahill lines of cases which preceded them, is "a condition in many poorer districts where the cost of local government--police, firefighters, other municipal employees, road maintenance, garbage collection, etc.--is so high that the municipality and the school district are reluctant to increase taxes for *any* purpose, including education." Abbott v. Burke, 119 N.J. 287, 325 (1990).

298. The Court in Abbott XX found that SFRA was designed to eliminate the concern of municipal overburden, specifically that the SFRA formula was “designed to supplement the funding for those districts that cannot raise their LFS to the amount required, to ensure that they still receive their Adequacy Budget and are fully funded.” Abbott XX, 199 N.J. at 165.

299. The Court in Abbott XX specifically recognized that Adjustment Aid was included in SFRA to make up the difference between a district’s LFS and its previous year’s tax levy. Id.

300. In order to ensure that municipal overburden would not occur, SFRA provides for its periodic review, requiring the Commissioner to study limitations on growth levels in districts and the districts’ ability to meet the LFS. Id.

301. While the State has produced two Educational Adequacy Reports, both well past their respective deadlines with the third not yet being produced notwithstanding its due date in September 2018, these reports have not been complete as they failed to address districts such as JCBOE’s ability to meet their LFS. See Wyns Cert., ¶¶ 17-19.

302. Notwithstanding that no review of districts’ ability to meet their LFS has occurred, the defendants in Abbott XX expected every district to be able to contribute its fair share and, while achievement towards that goal proceeded, Adjustment Aid would be reduced. Abbott XX, 199 N.J. at 165-66.

303. JCBOE, however, has been falling further below adequacy since SFRA was first implemented. See Wyns Cert., ¶ 146.

304. In fact, JCBOE’s local levy gap continues to increase, as opposed to decrease as predicted by the Supreme Court when it found SFRA facially constitutional.

305. The conditions highlighted by the Court in Abbott XX for the continuance of Adjustment Aid, specifically that districts be afforded time to incrementally raise their local tax

levy to the LFS level to avoid significant tax levy increases, do not yet exist in JCBOE as Jersey City would have to increase its property tax rate by 33% based upon 2018 Equalized Property values. See Wyncs Cert., ¶ 162.

306. Students in JCBOE have not received a thorough and efficient education since the 2008-09 school year, the only time that JCBOE funding was at the Adequacy Budget level, and SFRA Defendants' recent action in amending SFRA to phase out Adjustment Aid only exacerbates JCBOE's below adequacy financial condition.

307. By amending SFRA to eliminate Adjustment Aid, as set forth in N.J.S.A. 18A:7F-68(b), SFRA Defendants will cause JCBOE to fall further below adequacy.

308. SFRA Defendants bear the burden of demonstrating that any significant changes to the funding formula set forth in SFRA do not undermine the effort to ensure that students in all districts, and especially the former Abbott/SDA districts, receive a constitutionally required thorough and efficient education.

309. The recent amendments to SFRA cause direct harm to the students of JCBOE as a consequence of the reduction in school funding.

310. Jersey City's Adequacy Budget for the 2019-2020 school year is \$622,876,777. See Wyncs Cert., ¶ 152.

311. As a result of the phase out of Adjustment Aid due to amendments to SFRA, JCBOE will receive \$27,192,633 less in Adjustment Aid for the 2019-20 school year than it did in the previous school year. Id. at ¶ 150.

312. The amount of education funding JCBOE will receive for the 2019-2020 school year is \$157,077,883 less than the amount required to fund JCBOE's Adequacy Budget. Id. at ¶ 158.

313. The impacts upon JCBOE students will increase year-by-year as Adjustment Aid is phased out between now and the 2024-25 school year.

314. The elimination of Adjustment Aid will reduce funding for JCBOE in the amount of at least \$209,174,103 in the 2024-25 school year. See Wyns Cert., ¶ 163.

315. The phase out of Adjustment Aid through the 2024-25 school year will result in a cumulative loss of aid of at least \$795 million. See Wyns Cert., ¶ 149.

316. Even if the Payroll Tax Statute and Ordinance are upheld as constitutional, the payroll tax revenue will not be sufficient to cover the reduction and ultimate elimination of Adjustment Aid. See Wyns Cert., Ex. Z.

317. These reductions in, and the ultimate elimination of, Adjustment Aid, will cause JCBOE to fall further below the Adequacy Budget, which represents the amount necessary to provide a thorough and efficient education.

318. The loss of Adjustment Aid, and the subsequent fall further below adequacy, will cause irreparable harm to the students of Jersey City as a result of the need to eliminate instructional and support staff, exacerbating the issue within JCBOE schools where instructional and support staff are already well below SFRA modeling.

319. This harm will ultimately limit students' educational opportunities and irreversibly affect their long-term prospects for employment and their ability to be productive members of society.

**WHEREFORE**, Plaintiffs demand the following relief:

- a. A declaration that the reductions in and ultimate elimination of Adjustment Aid provided by N.J.S.A. 18A:7F-68(b) deny JCBOE the ability to provide its students with a thorough and efficient education;
- b. A permanent injunction of N.J.S.A. 18A:7F-68(b);
- c. Attorneys' fees and costs of this action; and
- d. Such other and further relief as the Court determines to be just and appropriate.

### **COUNT III**

#### **(Thorough and Efficient Education-As-Applied Challenge to EFCFA)**

320. Plaintiffs repeat and restate the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

321. To provide a constitutional thorough and efficient education, educational infrastructure must be safe, healthy and conducive to learning. N.J.S.A. 18A-7G-2(a).

322. The Court in Abbott V held that in order for the State to meet its constitutional obligations of providing a thorough and efficient education to students in SDA Districts, such as JCBOE, the State is required to fully fund the cost of “remediating the infrastructure and life cycle deficiencies that have been identified in the [SDA Districts] [and] fully fund the construction of any new classrooms needed to correct capacity deficiencies.” 153 N.J. at 524.

323. As stated above, in order to carry out the Court’s directives and the constitutional obligation to provide a thorough and efficient education, the Legislature enacted the EFCFA, N.J.S.A. 18A:7G-1 et seq.

324. The SDA was created pursuant to the EFCFA and is tasked with funding LRFPs approved by the DOE.

325. A LRF “details the district’s school facilities needs and the district’s plan to address those needs for the ensuing five years.” N.J.S.A. 18A:7G-4(a).

326. The LRFPs are to be amended at least once every five years to update enrollment projections, building capacities, and health and safety conditions. Id.

327. JCBOE last submitted a LRFP in 2005, with an amendment to same being approved by DOE in 2014. See Exhibit D.

328. JCBOE's approved LRFP consists of maintenance, remediation, and construction projects totaling \$\$1,388,681,525.00.

329. Of the approved amount of \$\$1,388,681,525.00, the SDA has only financed approximately \$361,064,210.97 worth of construction on the maintenance, remediation, and construction of facilities approved and in dire need in JCBOE.

330. There are currently no SDA funded projects under design and/or construction in JCBOE, notwithstanding that there are dozens of projects that have been approved by the DOE that should be receiving funding from the SDA to complete.

331. Defendants' failure to fully fund its DOE-approved LRFP's is a violation of the State's obligation to provide a thorough and efficient education to the students of JCBOE schools and directly contradicts the rulings in Abbott V and VII.

332. Defendants' failure to fully fund JCBOE's DOE-approved LRFP will cause direct harm to the students of JCBOE.

333. As a result of Defendants' failure to fund JCBOE's DOE-approved LRFP, JCBOE has had to siphon funds from its instructional budget to make necessary repairs to its aging infrastructure.

334. JCBOE's students are also forced to attend schools without potable water, where roofs and windows replaced, and where constant and inefficient "band-aid" repairs are made

instead of approved capital improvements being carried out as a result of Defendants' failure to comply with its constitutional obligations.

335. Defendants' failure to fully fund its DOE approved LRFP's is a violation of the State's obligation to provide a thorough and efficient education to the students of JCBOE schools and directly contradicts the rulings in Abbott V and VII.

**WHEREFORE**, Plaintiffs demand the following relief:

- a. A declaration that the failure to fully fund JCBOE's DOE-approved LRFP denies JCBOE the ability to provide its students with a thorough and efficient education;
- b. An Order requiring Defendants to fully fund JCBOE's DOE-approved LRFP plan;
- c. Attorneys' fees and costs of this action; and
- d. Such other and further relief as the Court determines to be just and appropriate.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-3, Angelo J. Genova, Esq. is hereby designated as trial counsel for Plaintiffs in the above matter.

#### **CERTIFICATION**

Pursuant to Rule 4:5-1, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending

arbitration proceeding, Additionally, I hereby certify to the best of my knowledge that I know of no party who should be joined in the action at this time.

**GENOVA BURNS LLC**  
*Attorneys for Plaintiffs,*  
*Jersey City Board of Education and*  
*E.H., a minor, by his guardian ad litem*  
*Shanna C. Givens*

*s/ Angelo J. Genova*  
ANGELO J. GENOVA  
JENNIFER BOREK

Date: July 23, 2019

#14824875v1 (21651.036)

**VERIFICATION**

I, Sudhan Thomas, am President of Plaintiff Jersey City Board of Education. I hereby certify that the facts set forth in the accompanying Verified Complaint are true and accurate based upon my first-hand knowledge, except as to those allegations recited upon information and belief, are a matter of public record, or are within the first-hand knowledge of others who have certified to the information.

Dated: July , 2019

\_\_\_\_\_  
SUDHAN THOMAS

**VERIFICATION**

I, Franklin Walker, am the Acting Superintendent of the Jersey City Public Schools. I hereby certify that the facts set forth in the accompanying Verified Complaint are true and accurate based upon my first-hand knowledge, except as to those allegations recited upon information and belief, are a matter of public record, or are within the first-hand knowledge of others who have certified to the information.

Dated: July , 2019

\_\_\_\_\_  
FRANKLIN WALKER