
JERSEY CITY BOARD OF EDUCATION
and G.D., a minor, by his guardian ad litem,
NICOLE GOHDE,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY; NEW JERSEY
DEPARTMENT OF EDUCATION; DR.
ANGELICA ALLEN-McMILLAN, in HER
official capacity as Acting 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 Schools
Development Authority,

Defendants-Respondents.

SUPERIOR COURT OF NEW
JERSEY - APPELLATE DIVISION

Docket No.: A-003642-22

CIVIL ACTION

ON APPEAL FROM
LAW DIVISION: MERCER
COUNTY

Docket No. MER-L-914-19

Sat Below:

Hon. Robert Lougy, A.J.S.C.

BRIEF OF PLAINTIFFS-APPELLANTS

Date Submitted: November 20, 2023

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PRELIMINARY STATEMENT

Over three decades ago, the Supreme Court in the Abbott v. Burke litigation found public school students in Jersey City and other “poorer urban” or “Abbott” districts had endured a violation of their constitutional right to a thorough and efficient (“T&E”) education that was “clear, severe, extensive, and of long duration.” After two failed attempts by the Defendants-Respondents (“State”) to remedy that violation, the Court was compelled to craft and impose judicial remedies to vindicate the students’ constitutional rights. Then, in 2009, the Court ruled that the State’s third remedial funding formula, the School Funding Reform Act, N.J.S.A. 18A:7F-43 to -63 (“SFRA”), could provide constitutionally-adequate funding for Jersey City students provided the State met two conditions: 1) fully fund the formula in its first three years; and 2) thereafter, rigorously review and adjust the formula, as needed, to keep the SFRA operating at its “optimal level” on a continuing basis in future years. Abbott v. Burke, 199 N.J. 140 (2009) (“Abbott XX”).

In holding the SFRA constitutional as applied in Jersey City, the court below failed to analyze Plaintiffs-Appellants’ compelling *prima facie* showing that the State was not operating the SFRA at its optimal level under the conditions imposed by the Supreme Court in Abbott XX for the formula’s continuing constitutionality. Compounding this fundamental legal error, the court reached its conclusion on a

contested motion for summary judgment without the development of a full factual record at an evidentiary hearing to determine whether the State had allowed deficits of a constitutional dimension to emerge in SFRA's implementation in Jersey City. The decision below is plainly at odds with the Abbott XX mandates and the standards governing motions for summary judgment. Further, given the profound interests of Jersey City students at stake, that decision must be reversed and the matter remanded for judicial branch adjudication under the substantive constitutional standards established in the Abbott litigation.

RELEVANT PROCEDURAL HISTORY

This case was initiated on April 29, 2019, by the filing of a Verified Complaint in the Law Division, Hudson County, by Plaintiffs Jersey City Board of Education ("JCBOE"), on behalf of Jersey City's public-school students, and by E.H., a minor student, by his Guardian Ad Litem, challenging the constitutionality of the SFRA as applied to the Jersey City School District. (Pa53-Pa104.) The case was transferred to Mercer County (Pa831-Pa832), and, on July 23, 2019, a First Amended Verified Complaint was filed which added a claim in Count III challenging the constitutionality of the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 to -48 ("EFCFA"), as applied to Jersey City. (Pa833-Pa908.) On September 1, 2020, a Second Amended Complaint was filed which substituted

the current minor plaintiff, G.D, and his Guardian Ad Litem Nicole Gohde, in place of the original student plaintiff. (Pa990-Pa1043.)

The parties exchanged written discovery and conducted depositions. (See, e.g., Pa1223; Pa1253; Pa1569; Pa1774; Pa2038; Pa2048; Pa2063; Pa2067; Pa2081.) On July 20, 2022, the State Defendants filed a motion for summary judgment asking the court to rule as a matter of law that the SFRA and ECFCA are constitutional as applied in Jersey City. (Pa1098-Pa1865.) On September 26, 2022, the Plaintiffs submitted opposition to the State’s motion and filed a cross-motion for summary judgment. (Pa1866-Pa2085.) On March 2, 2023, the court heard oral argument in connection with the motions. (IT:7-46.)¹ On June 14, 2023, the Hon. Robert Lougy, A.J.S.C., entered an Order, supported by a written opinion, granting the State’s motion for summary judgment and denying Plaintiffs’ cross-motion. (Pa1-Pa45.) On July 28, 2023, Plaintiffs filed a timely appeal of that final judgment with this court.² (Pa46-Pa52.)

¹ “IT” refers to the transcript of the oral argument held on March 2, 2023.

² Plaintiffs-Appellants are not pursuing their initial appeal of the trial court’s dismissal of Count III of their Second Amended Complaint, which alleged an as-applied constitutional challenge to the EFCFA.

STATEMENT OF FACTS

A. Abbott Violation of T&E in the Jersey City Public School District

The State has delegated to the Jersey City School District (“Jersey City” or “District”) its affirmative obligation under the State Constitution to provide a T&E education to all children residing in the City of Jersey City (“City”). N.J. Const. art. VIII, § 4, ¶ 1 (mandating the Legislature “provide for the maintenance and support of a thorough and efficient system” of public schools for “all children” in the state). The JCBOE governs District public schools and pursues this appeal on behalf of District students. The JCBOE operates 38 elementary, middle and secondary schools in neighborhoods throughout the City. (Pa1291.)

In 2019-20, 30,687 students were enrolled in District-operated public schools. (Pa1910; Pa1510.) Of this total resident student enrollment, 22,270 students – 72.5% -- were low income. (Id.) The District also enrolled 3,383 -- 11% -- Limited English Proficiency (“LEP”) students requiring English language instruction and 4,724 -- 15.3% -- students with disabilities requiring special education programs and services. (Pa1507; Pa1510.) Jersey City also serves 4,982 three and four-year old children in its Abbott mandated preschool program. (Pa1512.)

Jersey City students are also members of the court-certified plaintiff class of students in the ongoing Abbott litigation, a challenge to the State’s failure to provide

these students a constitutional T&E education. Abbott v. Burke, 100 N.J. 269, 278, n.1 (1985) (“Abbott I”). In addition to Jersey City students, the Abbott plaintiff class encompasses all students enrolled in 28 districts identified by the Supreme Court as “poorer urban” and are the “sole object of the remedy” for the State’s violation of T&E imposed by the Court in the Abbott litigation. Abbott v. Burke, 119 N.J. 287, 338-343 (1990) (“Abbott II”).³

Based on an extensive trial record, the Abbott plaintiffs demonstrated the State’s failure to provide a T&E education to students in Jersey City and the other designated poorer urban or “Abbott” districts, defined as an education to prepare them for citizenship, civic life, and effective participation in the economy. Abbott II, 119 N.J. at 313. The fundamental educational deficits proven in the Abbott trial encompassed not just funding levels but also teachers, support staff, building conditions, curriculum, course offerings, programs and services for struggling students and more, resulting in low achievement levels, high dropout rates and graduation rates far below the state average. See, e.g., Abbott II, 119 N.J. at 358-368 (describing in detail the “tragically inadequate” quality and level of education in the poorer urban districts). The trial evidence of educational deficiencies was so

³ The Legislature in 1990 and 2003 added three additional urban districts to the Abbott class to expand the scope of a remedy for the T&E violation to students in those districts. Abbott v. Burke, 149 N.J. 145, 158, n. 4 (1997) (“Abbott IV”) (Neptune and Plainfield districts); P.L. 2004, c. 61, § 1 (Salem City).

overwhelming that the Court found the State’s violation of a T&E education in the Abbott districts to be “clear, severe, extensive, and of long duration.” Id. at 385.

Given this irrefutable and overwhelming evidentiary record, the Supreme Court in Abbott II held that the Public School Education Act of 1975, the State’s school finance formula, failed to provide adequate funding to students in Jersey City and other Abbott districts, did not remedy the violation of their right to a T&E education, and was, therefore, unconstitutional. Id.

B. The Supreme Court’s Funding Remedy for the T&E Violation in Jersey City

To remedy the constitutional violation of T&E found in the Abbott litigation, the Supreme Court directed the State to develop and implement a two-part school funding remedy. Abbott II, 119 N.J. at 385-389. First, the State was required to fund comprehensive K-12 curriculum for all students in Abbott districts – termed “regular” education – at a level “substantially equivalent” – or at “parity” -- with the level spent per pupil in affluent suburban districts. Id. at 386. Secondly, the State was directed to provide funding for additional or “supplemental” programs and services designed to address and overcome the disadvantages of intense poverty, including preschool. Id. at 373-375.

Following issuance of these directives in 1990, the State enacted two finance formulas intended to remedy the constitutional violation in Abbott districts. On

review, the Supreme Court found both to be inadequate and inconsistent with the remedial directives in Abbott II for regular education funding parity and additional funding for needs-based supplemental programs. Abbott v. Burke, 136 N.J. 444 (1994) (“Abbott III”) (Quality Education Act); Abbott IV, 149 N.J. at 188-89 (Comprehensive Education Improvement and Financing Act).

In response to the State’s failures and to avoid further delay, the Supreme Court in 1997 and 1998 ordered State implementation of the Court’s own funding remedy in Abbott districts on an “interim” basis. Abbott IV, 149 N.J. at 190 (describing “our chosen interim remedy”). First, the Court directed the State to increase and maintain funding to the parity level, ensuring per-pupil expenditures equivalent to regular education spending in the successful suburban districts. Id. at 190-91. Second, following a remand proceeding, the Court approved a package of supplemental programs and services, including high quality preschool for all three- and four-year olds, and authorized Abbott districts to seek additional funding from the State for those programs based on demonstrated need. Abbott v. Burke, 153 N.J. 480, 510-18 (1998) (“Abbott V”).⁴

⁴ The Court in Abbott V also directed the State to “fully fund” the “complete cost of remediating the infrastructure and life cycle deficiencies” in district school buildings. Id. at 524; see also Abbott v. Burke, 164 N.J. 84, 88 (2000) (“Abbott VII”). To comply with this order, the Legislature enacted the EFCFA, recognizing that “[e]ducational infrastructure inadequacies are greatest in the [Abbott] districts

From 1997 through 2008, the T&E violation in Jersey City was remediated through the implementation of parity funding for regular education and needs-based funding of supplemental programs and services, as ordered by the Supreme Court in the Abbott litigation. Abbott v. Burke, 196 N.J. 544, 563 (2008) (“Abbott XIX”).

C. The State’s SFRA Funding Remedy for the T&E Violation in Jersey City

In 2008, the Legislature enacted the SFRA, a statewide “weighted” student finance formula. The SFRA was expressly designed and intended to remedy the continuing Abbott violation of T&E and, in so doing, replace the Supreme Court’s parity and needs-based supplemental funding remedy. N.J.S.A. 18A:7F-44. The main contours of the SFRA formula pertinent to this appeal are set forth below.

1. Adequacy Budget

Under the SFRA, funding levels for Jersey City are determined by the formula’s Adequacy Budget, calculated annually. The Adequacy Budget is derived from a “base per-pupil cost,” or the cost of providing the teachers, staff, administration, materials and other resources necessary to enable Jersey City elementary students to achieve the State’s academic standards, currently

where maintenance has been deferred and new construction has not been initiated due to concerns about cost.” N.J.S.A. 18A:7G-2(c).

denominated the New Jersey Student Learning Standards (“NJSLS”).⁵ The Adequacy Budget also includes an increase in the base cost – or “weight” – for middle and high school students; the additional cost of programs and services – expressed as a percentage or “weight” of the base cost -- for low income (“at-risk”) students, with Jersey City eligible for 57% of the base cost, the highest at-risk weight, due to a student poverty rate in excess 60% of student enrollment, N.J.S.A. 18A:7F-51b; and the additional cost or weight for programs and services for Limited English Proficiency (LEP) students who are English Language Learners. Finally, the Adequacy Budget includes one-third of the cost of special education for students with disabilities. N.J.S.A. 18A:7F-51; Abbott XX, 199 N.J. at 153-155; (Pa1915.)

2. Funding the Adequacy Budget

SFRA requires a mix of state and local property tax revenue to fund the cost of educating Jersey City students at the weighted per-pupil amount set by its Adequacy Budget from year-to-year. (Pa5; Pa1914-Pa1916); Abbott XX, 199 N.J. at 152. The SFRA is structured so that the District’s contribution of local property taxes to fund education spending at the Adequacy Budget level is determined first,

⁵ In Abbott IV, 149 N.J. at 168, the Supreme Court found the State’s substantive curriculum content standards to be “facially adequate” as a “reasonable” definition of T&E.

with the State responsible for funding the remaining balance. N.J.S.A. 18A:7F-52 to -58; (Pa7); Abbott XX, 199 N.J. at 155, 222.

Jersey City's required local property tax contribution is based on its Local Fair Share ("LFS"), a separate annual calculation within the SFRA that uses the City's equalized property wealth and household income. N.J.S.A. 18A:7F-52(a); (Pa1916); Abbott XX, 199 N.J at 155. The difference between the District's Adequacy Budget amount and its LFS is made up by the State with Equalization Aid, a category of SFRA formula aid. N.J.S.A. 18A:7F-52, -53; (Pa1916); Abbott XX, 199 N.J. at 155.

Under SFRA's funding structure, the LFS represents the amount of local property taxes the State expects Jersey City to contribute to fund its Adequacy Budget. It does not represent the actual amount the District provides from year-to-year. (Pa1916.) That actual amount – called the "local levy" – is the property tax revenue in the prior year budget. N.J.S.A. 18A:7F-5(b). In addition, from 2010 through 2018, Jersey City's ability to raise the amount of its local levy was constrained by a two percent (2%) cap on yearly increases to property tax rates imposed by the State. N.J.S.A. 18A:7F-38(a); (Pa914, ¶ 26; Pa932, ¶ 162.)

When SRFA was enacted, Jersey City's LFS was significantly above its local levy. (Pa915, ¶¶ 33-35.) The LFS continued to exceed the local levy in subsequent years even when the District raised its property tax contribution or levy by 2%. (Pa915, ¶ 29.) As a result, from the outset of the SFRA implementation, Jersey City

experienced a deficit in local revenue to fund the cost of education at its Adequacy Budget level. This deficit, called a “local levy gap,” occurs in SFRA’s operation because the actual local levy falls below the annual LFS calculation, or expected property tax contribution, from year-to-year. (Pa913, ¶ 20 - Pa915, ¶ 29.)

Central to SFRA’s implementation in Jersey City is that the State does *not* compel the City to provide property tax revenue in the amount required to fund spending at the level set in the Adequacy Budget. The SFRA only requires the City to provide the District with the amount of local revenue provided in the prior year. N.J.S.A. 18A:7F-5(b); Abbott XX, 199 N.J. at 155, 165. This structure means that the SFRA’s calculation of the expected -- not actual -- contribution of local tax revenue from the City determines the State’s share of funding the Adequacy Budget, even where the expected local revenue is below what the District actually receives. This also means that, when the SFRA’s calculation of the expected local share -- the LFS -- increases from year-to-year, the amount of state Equalization Aid to fund the Adequacy Budget decreases. N.J.S.A. 18A:7F-52(a); (Pa913, ¶¶ 20-22; Pa1001, ¶ 56 - Pa1002, ¶ 57.) Consequently, when Jersey City’s LFS rises, the District receives less aid from the State to fund its Adequacy Budget. This occurs even when the District has a funding shortfall that prevents the delivery of essential resources to students at the level prescribed by SFRA’s Adequacy Budget.

3. *Adjustment Aid and Education Adequacy Aid*

In enacting the SFRA, the State recognized that the formula's operation in Jersey City would result in a sizeable gap between the LFS and the local levy, causing a funding shortfall in the District's Adequacy Budget. To reduce the size of that shortfall, the SFRA provided two categories of state aid: Adjustment Aid and Education Adequacy Aid ("EAA"). N.J.S.A. 18A:7F-58.

Adjustment Aid was intended to enable Jersey City to maintain spending at the level of the year prior to SFRA's implementation. (Pa 1922); Abbott XX, 199 N.J. at 157, 165. Under the formula, Jersey City was eligible for Adjustment Aid because the sum of the District's state aid was less than its 2007-08 spending level, plus two percent. (Pa1922.) Further, as state Equalization Aid decreased because of growth in the LFS, Adjustment Aid was designed to increase. (Pa914, ¶ 25.)

Jersey City was also eligible for EAA under SFRA's formula because District spending in 2008-09 was below its Adequacy Budget. EAA was intended to bring funding up to its Adequacy Budget level within three years. N.J.S.A. 18A:7F-58; (Pa1917.) Jersey City was eligible to receive EAA in 2010-11 and thereafter because Jersey City was funded below its Adequacy Budget and the State determined the District was failing to meet educational adequacy standards. (Pa1918.)

D. SFRA's Implementation in Jersey City

In 2008-09, the State began operating the SFRA formula in Jersey City to remedy the constitutional violation of T&E found in the Abbott litigation. The factual record below on the SFRA's implementation from 2008-09 to 2019-20 demonstrates the following facts pertinent to this appeal.

1. Underfunding of Jersey City's Adequacy Budget

In SFRA's first year of implementation -- 2008-09 -- Jersey City's Adequacy Budget was "fully funded," i.e., the District received state and local revenue to provide students with essential education resources at the formula's Adequacy Budget level. (Pa915, ¶ 37; Pa1925-Pa1927.) Jersey City was able to spend at its Adequacy Budget level even though the local levy – or actual property taxes raised – was far below its LFS under the formula. The local levy gap in its Adequacy Budget was closed through a combination of Equalization Aid, Adjustment Aid and EAA from the State. (Pa915, ¶¶ 31-37; Pa1927.)

Since its enactment, Jersey City's Adequacy Budget has been steadily increasing. (Pa927, ¶ 144.) From 2008-09 to 2019-20, the Adequacy Budget increased nearly \$150 million, from \$473.8 million to \$622.8 million, or over 31%. (Pa913, ¶¶ 20, 160; cf. Pa331 and Pa1509.)

As its Adequacy Budget has risen, the state and local revenue to enable Jersey City to spend at that level has not kept pace, resulting in a consistent and growing

shortfall in the funding available to meet the cost of educating Jersey City students to achieve the NJSLS. The SFRA data in the following table shows Jersey City's weighted student enrollment; its Adequacy Budget level by per-pupil and on a total cost basis; and the funding shortfall by per pupil and total amount from 2008-09 through 2019-20:

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

(Pa931, ¶ 160.)

While Jersey City was funded slightly above its Adequacy Budget level in SFRA's first year of implementation -- 2008-09 -- a funding shortfall quickly emerged in 2009-10. (Pa915, ¶ 38 - Pa916, ¶ 43.) That shortfall was reduced in 2011-12 and 2012-13 when the State, under Supreme Court order, restored a cut in state formula aid of over \$400 million to Jersey City and the other Abbott districts. Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI"); (Pa916, ¶ 46 – Pa918, ¶ 70.) Following the Abbott XXI order, the funding shortfalls in Jersey City's Adequacy

Budget began to grow significantly, reaching approximately \$155.5 million, or \$3370 per weighted pupil, in 2019-20. (Pa931, ¶ 160.) For the first decade of SFRA’s operation, the cumulative funding shortfall in the District’s Adequacy Budget totaled \$730.2 million. (Id.)

2. Local Levy Gap in Jersey City’s Adequacy Budget

The funding shortfall in Jersey City’s Adequacy Budget from 2009-10 to 2019-20 is, at least in part, attributable to a local levy gap, i.e., the difference between the annual LFS calculation and the property tax revenue actually received each year. Jersey City’s local levy gap was structured in the design of the SFRA when enacted and continued in the formula’s operation in subsequent years through a combination of factors, including increases in the Adequacy Budget’s cost of educating students; increases in the LFS; the 2% cap on property tax increases; and decreases in state aid. (Pa914, ¶¶ 24, 27-28.)

As the following data shows, from 2008-09 to 2019-20, the increases in Jersey City’s LFS far exceeded the increases in the local levy, resulting in a widening local levy gap:

School Year	Local School Tax Levy	LFS per SFRA	Local Levy Gap
2008-09	\$86,122,268	\$196,262,527	\$110,140,259
2009-10	\$93,012,049	\$208,930,150	\$115,918,101
2010-11	\$102,313,254	\$224,695,223	\$122,381,969
2011-12	\$104,359,519	\$227,070,183	\$122,710,664
2012-13	\$106,446,709	\$223,671,965	\$117,225,256

2013-14	\$108,336,848	\$246,144,257	\$137,807,409
2014-15	\$109,961,901	\$311,145,670	\$201,183,769
2015-16	\$112,161,139	\$335,745,966	\$223,584,827
2016-17	\$114,404,361	\$336,460,489	\$222,056,128
2017-18	\$116,692,448	\$370,261,455	\$253,569,007
2018-19	\$124,367,357	\$398,895,043	\$274,527,686
2019-20	\$136,504,704	\$474,039,468	\$337,534,764

(Pa915, ¶ 29 to Pa929, ¶ 146; Pa930, ¶ 153 to Pa931, ¶ 158; Pa1947-Pa1948.)

During this timeframe, Jersey City's LFS increased from \$196.2 million to \$474 million, or nearly 142% (Pa913, ¶ 21), and the local levy gap increased by over \$220 million, or more than 206%. (Pa915, ¶ 29.)

As the LFS increased dramatically, Jersey City's increases in the local levy were constrained by the 2% property tax cap. (Pa914, ¶ 26.) From 2008-09 to 2019-20, the local levy increased by approximately 58% but remained insufficient to close the funding shortfall in the District's Adequacy Budget. (Pa914, ¶ 23.)

SFRA's operation in Jersey City not only resulted in significant increases in the District's LFS -- and a widening local levy gap -- it also caused reductions in Equalization Aid to fund the Adequacy Budget. This occurs because SFRA's formula uses the LFS to determine the State's share of funding the Adequacy Budget. N.J.S.A. 18A:7F-52(a); (Pa913, ¶¶ 20-22; Pa1001, ¶ 56 to Pa1002, ¶ 57.) Between 2008-09 and 2019-20, the State share of Adequacy Budget funding decreased by 46%, from \$277,591,645 to \$148,837,309. (Pa913, ¶¶ 20-22; Pa915, ¶ 32; Pa930, ¶153; see generally Pa915-Pa926.) As the expected share of local funding for the

Adequacy Budget increased through the annual LFS calculation, the State's share went down, contributing to a structural deficit in the total state and local revenue needed to fund the cost of educating District students at the Adequacy Budget level.

To help minimize the deficit in the State's share of funding Jersey City's Adequacy Budget, the SFRA provided Adjustment Aid and EAA. Because Jersey City's total state aid continued over the decade to fall further behind the amount received in 2008-09, Adjustment Aid increased from \$109.9 million in 2009-10 to \$181.9 million in 2019-20. (Pa915, ¶ 38 to Pa916, ¶ 44; Pa930, ¶ 152 to Pa931, ¶ 157.) But the District did not receive EAA at the level set by the SFRA as enacted. The State, through successive Appropriations Acts beginning 2010-11, altered the formula by reducing, and then locking-in, the amount of EAA to Jersey City at \$125,411 per year, even though the District was eligible under the formula to receive \$16.8 million each year to help fund its Adequacy Budget. (Pa1917-Pa1920); N.J.S.A. 18A:7F-58(b) (requiring the State to provide EAA in 2011-12 and "each school year thereafter" at the amount received in 2010-11).

3. The 2018 Amendments to SFRA

In 2018, the Legislature enacted amendments to the SFRA ("Amendments") that make three changes to the formula's operation in Jersey City. See P.L. 2018, c. 67 (eff. July 24, 2018) (Pa2250-Pa2255.) These Amendments phase-out and eliminate Adjustment Aid, remove the 2% property tax growth cap, and allow the

City to impose a payroll tax on employers to generate additional local revenue. (Id.)

a. Elimination of Adjustment Aid

The Amendments establish a schedule for the State to phase out and eliminate Adjustment Aid from the SFRA formula. Beginning 2019-20, when the District received \$181.9 million in Adjustment Aid, the State will phase out the aid category altogether by 2024-25, resulting in an estimated \$1 billion cumulative loss in state aid to help fund the Adequacy Budget. (Pa1943; Pa1954.) The percentage reductions in Adjustment Aid rise from year-to-year, starting with 13% in 2019-20 and rising to 100% in 2024-25, the final year of the phase-out. (Pa929, ¶ 147; Pa2251.)

b. Lifting the 2% Tax Growth Cap

The Amendments removed the 2% cap on increases in the local property tax levy beginning 2019-20. In response, the City increased the local levy by 52% in two years, from \$124.3 million in 2018-19 to \$189 million in 2020-21. (Pa1948.) Even with these increases, Jersey City's local levy remained below its LFS. As of 2020-21, the District's local levy was more than \$332 million below its LFS. (Pa1944.)

c. Local Payroll Tax

The Amendments also gave the City discretion to impose a local employer payroll tax to be used exclusively by the District. N.J.S.A. 40:48C-15. In response,

the City adopted Ordinance 18-133, imposing a 1% employer payroll tax, effective January 1, 2019. (Pa207-Pa218.) The Ordinance does not set a specific revenue amount, nor does it require the payroll tax to be sufficient to offset the cuts to state Adjustment Aid mandated by the Amendments. (Id.); see also N.J.S.A. 40:48C-15. The City payroll tax generated approximately \$30.7 million for the District in 2019-20 and \$86 million in 2020-21. (Pa1996; Pa2007.)

4. Review of SFRA's Operation in Jersey City

The SFRA requires the State, every three years, to review and evaluate the formula's education costs, weights, aid amounts and other elements and make adjustments and modifications as may be necessary to deliver funding adequate for students to achieve the NJSLs. N.J.S.A. 18A:7F-46(b). The "adequacy review" is undertaken by the Governor, in consultation with the Commissioner of Education, through the preparation and submission of an "Educational Adequacy Report," with recommendations for formula adjustments, to the Legislature. Id.; see also Abbott XX, 199 N.J. at 146-47.

From its enactment through 2019-20, the State issued three Educational Adequacy Reports ("Reports") on the SFRA's operation – FY2014, FY2017 and FY2020. (Pa2256-Pa2278; Pa2279-Pa2292; Pa2293-Pa2306.) On their face, the Reports are perfunctory, yielding no evaluation, analysis or recommendations for

adjustment or modification of the formula's education cost, weights and aid amounts, other than increases for the CPI and in statewide average wages and benefits. The Reports do not evaluate the operation of the SFRA in Jersey City and other Abbott districts that may have experienced funding shortfalls in their Adequacy Budgets, along with the structural factors responsible for those shortfalls such as the LFS methodology, local levy gaps, and an inadequate State share. (Id.; see also Pa1922-Pa1923; Pa1937.)

When enacting the SFRA, the Legislature was aware that the LFS calculation and its use in determining the State share might impede districts such as Jersey City from fairly and realistically generating the local revenue required to fund their Adequacy Budgets. To respond to this concern, the Legislature included a provision in the SFRA, originally codified at N.J.S.A. 18A:7F-59, requiring the State to conduct a study to analyze the limitation on property tax revenue and its impact “on disparities in spending among the districts” with recommendations for effectively addressing those disparities. (Pa2246.) In 2010, the Legislature repealed this requirement before the study got underway. P.L. 2010, c. 44, § 12 (Pa2249.)⁶ Since SFRA's implementation in Jersey City, the State has not undertaken any review,

⁶ At the same time as the Legislature repealed the SFRA provision mandating the tax levy growth cap study, it reduced the property tax levy cap from 4% to 2%. See P.L. 2010, c. 44, § 4. (Pa2248.)

study or other evaluation of the operation of the LFS in Jersey City and its effect in causing state and local funding shortfalls in the District's Adequacy Budget. (Pa1920-Pa1921.)

E. Impact of SFRA Underfunding on Jersey City Students

The recurring funding shortfalls in Jersey City's Adequacy Budget have resulted in deficits in the teachers, support staff, programs and services determined by the State in the SFRA formula to be essential for students to achieve the NJSLs and remedy the Abbott violation of T&E. (Pa1894-Pa1896; Pa2043-Pa2046; Pa2050-Pa2052; Pa1012-Pa1017.) For example, in 2018, the District eliminated its highly successful third grade reading program, an intensive early literacy intervention, an Abbott supplemental program mandated by Department of Education regulation, N.J.A.C. 6A:13-3.4(a). (Pa2043-Pa2046.)

Starting in 2018, Jersey City reduced the number of staff to provide academic and academically related social and health services to students, a critical Abbott supplemental program in the high poverty Abbott districts that the SFRA was intended to adequately fund. See Abbott XX, 199 N.J. at 173 n. 15 (State assurance that the SFRA provides funding to Abbott districts to deliver needed Abbott supplemental programs); see also Abbott v. Burke, 177 N.J. 578 (2003) ("Abbott X") (providing chart of Abbott supplemental programs and services). These support staff include licensed clinical social workers, extension teachers, and teacher aides.

(Pa1895, ¶ 4.) Further, kindergarten teacher aides are consigned to overcrowded classrooms of more than 21 students impairing their ability to enhance student-learning and provide small group instruction to improve young at-risk students' math and reading abilities, as well as other vital subjects. (Id., ¶¶ 5-6.)

Jersey City has also been unable to increase teacher salaries to compete with more affluent districts in attracting and retaining qualified instructional staff. (Id., ¶¶ 7-12.) The District has been understaffed in a number of core content areas (Pa1012-Pa1017), compounded by the broader teacher shortage in the public schools. (Pa1895, ¶ 8.) The District also has a shortage of qualified teachers in critical areas, such as special education, which has contributed to larger classroom sizes and the use of substitutes to provide daily instruction. (Id., ¶ 9.) It has lost many teachers because it cannot match salaries and working conditions in more affluent districts. (Id., ¶ 10.) A number of teachers have resigned and taken positions in other districts that provide higher salaries and signing bonuses, with some teachers earning \$10,000 to \$20,000 more in their new districts. (Id., ¶¶ 11-12.)

The dilapidated condition of Jersey City's school buildings has compelled the District to reallocate funds from its Adequacy Budget to make health, safety and other emergency repairs, diminishing the teachers, support staff and other resources

essential to educate Jersey City's students. (Pa1029, ¶ 248; Pa1896, ¶ 131.)⁷ The use of operational funds to meet urgent facilities needs is directly attributable to the State's failure to adequately finance the school construction remedy ordered in the Abbott litigation. Abbott V, 153 N.J. at 524. For example, the District was forced to use operational funds to renovate two over 100-year-old buildings, PS20 and PS31, to meet the Abbott mandate for universal, high-quality preschool for all three- and four-year olds residing in Jersey City. (Pa2083-Pa2084, No. 151); Abbott V, 153 N.J. at 507-08.

Jersey City currently houses over 40% of its students in antiquated facilities, including sixteen (16) schools that are more than 100 years old and four (4) schools constructed in the 1920s. (Pa2055, ¶ 4.) Many of these buildings lack adequate

⁷ After years without any funds for facilities improvements in Jersey City, as mandated in the Abbott litigation, the Legislature recently approved \$1.85 billion for school construction and capital maintenance projects for all Abbott districts. The only commitment of these funds to Jersey City is to construct a preschool facility housing 360 children. (See 2022 Statewide Strategic Plan for SDA Districts, Pa1762.) The State estimates over \$5 billion is required to replace aged, outmoded buildings, Jersey City's most pressing need, and the State has no permanent funding mechanism for emergent repairs and capital maintenance in these buildings. See Abbott v. Burke, 253 N.J. 591 (2023) (denying the Abbott plaintiffs' motion seeking additional school construction funding); see also Abbott v. Burke, 249 N.J. 346 (2021) (appointing Special Master to conduct detailed analysis of cost estimates needed for facilities improvements in Abbott districts); and Special Master's Report to Supreme Court, March 29, 2023 (detailing facilities needs in Abbott districts.) (Pa2307-Pa2393.)

toilets, elevators or any type of handicap accessibility, functioning kitchens, specialized classrooms, and adequate air conditioning and/or functioning mechanical ventilation systems. (Id.; Pa2061, ¶ 18.) Many of these buildings require roof replacements. (Pa1030, ¶ 255; Pa2058-Pa2059, ¶ 9.) Because of overcrowding, the District uses temporary classroom trailers on school property. (Pa2056, ¶ 5.) The roof had to be replaced in the A. Harry More School, causing all of its students—who have special needs—to be merged with classrooms in other schools. (Pa2050; Pa2058; see also Pa2069) (noting the disruption of student learning caused by the building emergency). The District had no choice but to pay for the roof replacement project from its operational budget. (Pa2065-Pa2066.) These and other emergent repair projects have – and will continue to – directly undermine and weaken Jersey City’s capacity to provide the essential staff, programs and services required for students to achieve the NJSLS and remedy the District’s T&E violation.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, an appellate court reviews the decision *de novo*, applying the same standard as the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Under that standard, summary judgment must be granted “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). A determination of the existence of a ‘genuine issue’ of material fact “requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

The motion judge's function “is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). In making this determination, the motion court must draw all legitimate inferences from the facts in favor of the non-moving party. Globe Motor Co. v. Igdaley, 225 N.J. 469, 481 (2016) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

A determination of whether a moving party is entitled to judgment “as a matter of law” requires the judge to “analyze the record in light of the substantive standard and burden of proof that a factfinder would apply in the event that the case was tried.” Globe Motor Co. v. Igdaley, 225 N.J. at 480 (emphasis added). Moreover, “the trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference” and, therefore, an issue of

law is subject to *de novo* plenary review on appeal. Thomas Makuch, LLC v. Twp. of Jackson, 476 N.J. Super. 169, 184 (App. Div. 2023) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 3 (1995)).

LEGAL ARGUMENT

POINT I

THE COURT BELOW FAILED TO EVALUATE THE STATE'S IMPLEMENTATION OF THE SFRA IN JERSEY CITY AS A FUNDING MEASURE APPROVED BY THE SUPREME COURT TO REMEDY THE LONGSTANDING VIOLATION OF A THOROUGH AND EFFICIENT EDUCATION IN THE ABBOTT LITIGATION (Raised Below: 1T:8-13 to IT:20-5; IT:34-19 to IT:46-15; Pa24-Pa28; Pa32-Pa33)

The central issue on this appeal is that the State, for over a decade, has implemented the SFRA formula in Jersey City by consistently and significantly underfunding its Adequacy Budget, the spending level prescribed by the formula to ensure students the resources for a constitutional T&E education. On motions for summary judgment, the Court below failed to analyze Jersey City's claim under the standards established by the Supreme Court in Abbott XX for determining the SFRA's continuing constitutionality as a remedy for the longstanding and severe violation of T&E in the Abbott litigation. The failure to apply those constitutional standards to the compelling record evidence of Jersey City's underfunded Adequacy Budget constitutes fundamental error and requires reversal of the decision below.

A. The Abbott XX Ruling Imposed Express Mandates on the State’s Implementation of the SFRA to Ensure Continued Remediation of the T&E Violation in Jersey City.

Like its QEA and CEIFA predecessors, the SFRA was enacted as a statutory mechanism to fund public education in all New Jersey districts. But the SFRA was designed for an explicit constitutional purpose: to comply with the Supreme Court’s funding directives in the Abbott litigation to remedy the ongoing violation of T&E in Jersey City and the other Abbott districts. In analyzing Jersey City’s claim of recurring funding shortfalls in its SFRA Adequacy Budget, the court below ignored this fundamental constitutional objective. It then failed to analyze the factual record on the State’s implementation of the SFRA in Jersey City under the explicit mandates imposed by the Supreme Court in Abbott XX to maintain the SFRA’s constitutionality in the years following its enactment.

In Abbott XX, the Supreme Court made clear that its review of the SFRA was limited to determining whether the new formula would ensure “a constitutional level of funding” as applied to students in Abbott districts. Abbott XIX, 196 N.J. at 551. The Court emphasized that its jurisdiction was circumscribed by the Abbott litigation and did not extend to evaluating the formula’s constitutionality statewide. Id. The Court also made clear that the purpose of its review was to determine whether to grant the specific relief sought by the State, namely, to replace the Court’s prior

orders for parity and supplemental funding with the SFRA's funding formula to remedy the violation of T&E in Abbott districts in future years. As the Court states:

We cannot give an advisory opinion on SFRA's statewide constitutionality. The *Abbott v. Burke* litigation does not provide the Court with jurisdiction to address the statute's applicability to students not before this Court. However, we do have jurisdiction to determine whether SFRA is constitutional as applied to pupils in the Abbott districts. Moreover, the existing decisions and orders of this Court must serve as the starting point for any discussion of the constitutionality as applied to the pupils who are the beneficiaries of those rulings.

Id. at 551.

In keeping within the confines of its limited jurisdiction, and with the benefit of a remand and Special Master's report, the Supreme Court "concludes" that the SFRA "is constitutional to the extent" the record before the Court "permitted its review." *Abbott XX*, 199 N.J. at 146. The Court then allowed the State to apply the SFRA formula "in Abbott districts." Id. The Court also granted the State's request to end implementation of the "separate funding streams" in those districts mandated by the Court "under past remedial orders." Id., at 147.

But the Supreme Court also imposed future conditions on its determination that SFRA is constitutional and, therefore, could be applied by the State to remedy the violation of T&E in Abbott districts. Specifically, the Court mandated the State provide school funding in those districts for the first three years of implementation

“at the levels required by the SFRA’s formula each year.” Abbott XX, 199 N.J. at 146. After the first years of full SFRA funding in Abbott districts, the Court mandated the State to follow through with the SFRA’s provision for review and adjustment of “the formula’s weights and other operative parts” every three years. Id. Further, the Court underscored that its explicit objective in imposing this mandate is to ensure the State maintains the operation of the SFRA formula at its “optimal level” in Abbott districts not only in its first three years, but also in the years beyond the initial implementation phase. Id. (emphasis added).

The Supreme Court stressed it was imposing these mandates on the State’s future implementation of the SFRA in the Abbott districts because, first, its review of whether the SFRA could serve as a constitutional remedy in Abbott districts relied on “currently available information.” Id.; and see id., at 172 (stating “we do not have the ability to see ahead” and know if the SFRA “will work as it is designed to work”). Second, the Court expressed concern that the “measurable educational improvement” for students in Abbott districts through the implementation of court-ordered parity and supplemental funding remedy be sustained, Abbott XIX, 196 N.J. at 549, and that the State “not allow” the Abbott districts “to regress to the former problems that necessitated judicial intervention in the first place.” Abbott XX, 199 N.J. at 172.

Declaring that the SFRA funding formula’s constitutionality “is not an occurrence at a moment in time” but “a continuing obligation” upon the State, Abbott XX, 199 N.J. at 146 (emphasis added), the Court conditioned its determination of SFRA’s constitutionality with express mandates to ensure the State operates the SFRA formula in Abbott districts at its “optimal level” to remedy the T&E violation in those districts on a going forward basis. Id. at 146 (emphasis added).

The decision below recognized Jersey City is “an original Abbott district.” (Pa9.) But it then examines the claim of SFRA’s unconstitutional implementation under the usual deference afforded legislative enactments. This deferential review may be appropriate for districts not subjected to a violation of T&E of longstanding duration and grave severity as in the Abbott litigation. But it was grave error to do so in determining Jersey City’s claim. In Abbott XX, the Supreme Court did not conclude that the State had fully remediated the T&E violation in Jersey City. Nor did the Court hold that if Jersey City sought judicial intervention to remediate a claim that the State had failed to operate the SFRA at its optimal level in contravention of Abbott XX’s mandates, the formula would be given the deference accorded statutory enactments generally (Pa39-Pa43), and that, even worse, District students would be compelled to prove a constitutional violation of T&E all over again. (Pa43.)

Simply put, the Supreme Court in Abbott XX allowed the State to implement the SFRA in Jersey City as its chosen remedy for the T&E violation previously found in the Abbott litigation. The record below demonstrates that the SFRA formula was allowed to operate at funding levels substantially below Jersey City's Adequacy Budget for over a decade. The mandates imposed by the Supreme Court on the State in Abbott XX to ensure the formula's continuing operation at its optimal level comprise the proper legal framework for evaluating Jersey City's claim of SFRA underfunding.

B. The State Failed to Implement the SFRA in Jersey City at the Formula's Optimal Level.

In relieving the State of its prior funding orders and allowing implementation of the SFRA, the Supreme Court imposed two interrelated mandates on the State to ensure the formula's continuing constitutionality. Abbott XX, 199 N.J. at 146. These mandates are that the State fully fund SFRA's formula in the first three years, and every three years thereafter, subject the formula to a "rigorous" review and adjustment "that is meaningful and relevant for the Abbott districts so that the SFRA continues to operate optimally and as intended in future years for pupils in those districts." Abbott XXI, 206 N.J. at 354, 375 (describing the "express mandates" imposed upon the State to ensure SFRA's implementation will "deliver to Abbott

pupils all that the State assured” is encompassed in the formula’s education cost, student weights and aid amounts).

On Abbott XX’s first SFRA implementation mandate, the State blatantly disregarded its obligation to fully fund the formula in the three years after its enactment. In year three, the State cut \$402.4 million in state formula aid to the Abbott districts, or \$1,425 per pupil. Abbott XXI, 206 N.J. at 358. The State’s breach, however, was remedied by the Supreme Court itself when, on motion by the Abbott plaintiffs, it found the State made a “conscious and calculated decision to underfund the SFRA,” id., at 359, and ordered the State to calculate and provide “SFRA’s statutory level of formula funding” to Jersey City and the other Abbott districts in FY2012 for the 2012-13 school year. Id. at 376.

On Abbott XX’s second mandate for SFRA review and “retooling” at regular intervals, the record below shows the State failed to operate the SFRA in Jersey City in the years subsequent to 2012-13 at the formula’s “optimal level.” Abbott XX, 199 N.J. at 146. Beginning in 2013-14, the State failed to provide funding to Jersey City at the level of its SFRA Adequacy Budget, the “core” of the SFRA formula that represents the cost of educating all Jersey City students to achieve the NJSLs, including the cost of supplemental programs for at-risk students identified in the Abbott litigation. Id. at 153-54. The State permitted the funding shortfalls in Jersey City’s Adequacy Budget to emerge immediately after the Supreme Court in Abbott

XXI ordered the State to restore full SFRA funding in 2012-13. For the 2013-14 school year, the funding shortfall in Jersey City's Adequacy Budget totaled over \$23 million, or \$562 per weighed pupil. The State then allowed the shortfalls to significantly grow over the next six (6) years, from a total shortfall of \$91.6 million or \$2002 per weighted pupil in 2014-15 to \$155.4 million, or \$3,370 per weighted pupil in 2019-20.

Analogous to the cut in state formula aid restored in Abbott XXI, the recurring shortfalls in Jersey City's Adequacy Budget that emerged after that decision and order "are not of a de minimus or inconsequential nature." Abbott XXI, 206 N.J. at 360. These shortfalls – on a yearly basis and cumulatively – are facially substantial, impacting the District's ability to provide the teachers, support staff and other resources the State assured would be delivered by the SFRA "to the beneficiaries of [the Court's] prior remedial orders," namely "the pupils of the Abbott districts." Id. Allowing these shortfalls not only to persist but also to grow from year-to-year represents a *prima facie* showing of the State's failure to meet Abbott XX's express mandate to review and adjust SFRA so that it continued to operate in Jersey City at the formula's "optimal level."

Jersey City also made a *prima facie* showing that the State, confronted with large and growing funding shortfalls in Jersey City's Adequacy Budgets, failed to engage in reviews of SFRA's implementation that were "meaningful and relevant"

and, based on rigorous analysis, make such adjustments as necessary to effectuate the formula's optimal operation in the District. Abbott XXI, 206 N.J. at 376. In 2010, the State repealed a provision enacted in the SFRA that required the State to conduct an expert study of the formula's local growth limitation and how it operates to constrain funding for Jersey City's Adequacy Budget. The State also did not conduct any review of the formula's LFS calculation and its use in determining the level of state support for the Adequacy Budget in its periodic reviews or otherwise, even in the face of glaring evidence that a widening local levy gap was a key factor in the Budget shortfalls. Further, the three periodic reviews the State performed were neither rigorous, meaningful nor relevant to Jersey City, and did not analyze the formula's operation and the factors responsible for the recurring underfunding of the Adequacy Budget. Nor did these reviews yield recommendations for adjusting the SFRA or modifications to address the recurring and structural problems and deficiencies in SFRA's operation and the underfunding of Jersey City's Adequacy Budget.

Finally, the State's 2018 amendments altered SFRA's operation in Jersey City by: 1) phasing-out Adjustment Aid over a six-year period, a state aid loss totaling over \$1 billion; 2) authorizing, but not mandating, the City to enact an employer payroll tax; and 3) lifting the 2% cap on the local levy without mandating property tax revenue be increased to the level required by the LFS. These changes to SFRA's

formula substantially decrease the State's share of funding the Adequacy Budget, while allowing – but not mandating -- elected City officials to increase the local share of that Budget. The State did not proffer evidence below to show that the 2018 Amendments, standing alone or combined, are intended to eliminate the funding shortfalls in Jersey City's Adequacy Budget, will actually do so in prompt fashion, and will maintain a fully funded Adequacy Budget for Jersey City students in future years.

The failure below to analyze the record on SFRA's implementation in Jersey City under the “express mandates” imposed on the State in Abbott XX to ensure its optimal operation resulted in legal errors of constitutional magnitude. The most egregious error is the determination that Jersey City's Adequacy Budget represents nothing more than an “estimate” of the cost of educating students to achieve the NJSLs and, consequently, the State is “not required” to optimally operate the SFRA by ensuring District students a fully funded Adequacy Budget. (Pa5; Pa37-Pa38.) This conclusion rests upon a profound and obvious misapplication of the constitutional standards for State remediation of the violation of T&E in Abbott districts established by the Supreme Court in the Abbott XX rulings. It also resulted in a decision that, at bottom, sanctions the very underfunding of the SFRA by the State that the Supreme Court condemned in Abbott XXI after the State drastically cut formula aid in 2011:

When this Court permitted the substitution of our prior orders, which remediated a constitutional violation, with the State's alternative of SFRA funding, it did not alter the constitutional underpinnings to the replacement relief. Our grant of relief was clear and it was exacting: It came with express mandates. We required full funding, and a retooling of SFRA's formula's parts, at the designated mileposts of the formula's implementation. **When we granted the relief the State requested, this Court did not authorize the State to replace parity funding with some underfunded version of SFRA.**

Abbott XXI, 206 N.J. at 360 (emphasis added).

The decision below that Jersey City failed to assert a viable claim of unconstitutional SFRA implementation amounts to giving the State a judicial green light to replace the Supreme Court's prior remedial orders for parity and supplemental funding with "*some* version of the SFRA or an underfunded version of the formula." Abbott XXI, 206 N.J. at 341 (emphasis in original) (describing the State's action in reducing formula aid as amounting "to nothing less than renegeing on the representations it made when it was allowed to exchange SFRA funding for the parity remedy"). The decision below is based on a fundamental legal error. It must be reversed.

POINT II

THIS MATTER SHOULD BE REMANDED TO DETERMINE WHETHER THE STATE HAS ALLOWED DEFICIENCIES OF A CONSTITUTIONAL DIMENSION REQUIRING REMEDIATION TO EMERGE IN SFRA'S IMPLEMENTATION IN JERSEY CITY (Raised Below: 1T:8-13 to IT:20-5; IT:34-19 to IT:46-15; Pa24-Pa28; Pa32-Pa33)

In the record below, Jersey City made a *prima facie* showing of serious problems and defects in the State's implementation of the SFRA formula in the years following its enactment. That evidence included the significant and recurring underfunding of Jersey City's Adequacy Budget, the "core" of SFRA's formula, Abbott XX, 199 N.J. at 153; the failure to rigorously review and analyze the elements of the formula's operation relevant and meaningful to the shortfalls in the Adequacy Budget, including the LFS calculation; the restrictions on the local levy, reductions in state formula aid and other contributing factors to the Adequacy Budget shortfalls; and the impact of those shortfalls on the availability of essential education resources the SFRA was designed to deliver to remediate the ongoing Abbott violation of T&E endured by generations of Jersey City students.

The court below did not evaluate these deficits and deficiencies in SFRA's operation in Jersey City because it simply ignored Abbott XX's express mandates to ensure the formula's continuing constitutionality. Consequently, the court did not

determine the core question identified in Abbott XX, namely, whether operational deficiencies have emerged in Jersey City that are “of a constitutional dimension” and, consequently, require judicial branch remediation. This failure is inexplicable given that the Supreme Court put the State on clear and firm notice of judicial intervention if it did not maintain the SFRA formula’s optimal operation in Jersey City in future years:

There should be no doubt that we would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge.

Abbott XX, 199 N.J. at 146 (emphasis added); Abbott XXI, 206 N.J. at 360 (finding that, where the State is in breach of its “ongoing responsibilities and obligations” under Abbott XX, students have “every right to relief...based on the State’s failure to fully fund the SFRA in Abbott districts”).

When confronted with compelling evidence of the State’s non-compliance with its obligation to remedy the T&E violation in Abbott districts, the Supreme Court has eschewed reliance on a factual record comprised only of affidavits and submissions by the parties. Because the rights of Abbott plaintiff students to funding for “a constitutionally adequate education” is at stake, the Court has required “the development of an evidential record” as a prerequisite for judicial evaluation of State compliance with Abbott funding remedies. Abbott XIX, 196 N.J. at 565-66; and see Abbott XXI, 206 N.J. at 356-57 (remanding to develop “additional information” to

facilitate the Court's determination of the continuing constitutionality of an underfunded SFRA in Abbott districts).

At the heart of this appeal is Jersey City's claim that its SFRA Adequacy Budget has been seriously underfunded, a condition attributable to deficiencies in the formula's operation over an extended timeframe. The proper evaluation of this claim demands a detailed evidentiary record of the asserted deficits in SFRA's operation and the State's response – or failure to respond – to those problems, including, *inter alia*, the SFRA's Adequacy Budget calculations and funding shortfalls; the structural formula components causing or contributing to those shortfalls; and the impact of reduced levels of SFRA funding on teachers, support staff and other resources essential to remedy the T&E violation in Jersey City.

A full evidential record is further required to enable the court below to reach a determination on the central issue presented by Plaintiffs' complaint: SFRA's *continuing* constitutionality as applied to Jersey City. Resolving this issue, in turn, necessitates an adjudication on remand to determine whether the State has breached Abbott XX's express mandates for the optimal operation of the SFRA in Jersey City and has allowed formula deficiencies of a "constitutional dimension" to emerge, thereby necessitating judicial branch remediation to correct the State's breach.

Finally, in remanding this matter for the development of an evidential record, the burden of proof to demonstrate compliance with Abbott XX's mandates for

SFRA’s optimal operation rests squarely on the State, and not on Jersey City as the court below erroneously held. The Supreme Court has made clear in the Abbott litigation that the burden has been placed on the State “each time the State has advanced” a funding mechanism “that it has asserted to be compliant with the thorough and efficient constitutional requirement.” Abbott XIX, 196 N.J. at 565-66; see also Abbott XXI, 206 N.J. at 357 (placing the burden on the State to demonstrate that its reductions in SFRA funding “can provide” for a T&E education).

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that the court reverse the order granting summary judgment to Defendants-Respondents and remand this case to proceed to a trial on the merits.

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a minor, by his guardian ad litem Nicole Gohde

s/ Angelo J. Genova

ANGELO J. GENOVA
JENNIFER BOREK

Dated: November 20, 2023

JERSEY CITY BOARD OF	:	SUPERIOR COURT OF NEW JERSEY
EDUCATION; and G.D., a minor,	:	APPELLATE DIVISION
by his guardian ad litem, NICOLE	:	
GOHDE,	:	<u>CIVIL ACTION</u>
	:	
Appellants,	:	Docket No.: A-3642-22
	:	
v.	:	ON APPEAL FROM AN ORDER OF
	:	THE SUPERIOR COURT OF NEW
	:	JERSEY — LAW DIVISION
STATE OF NEW JERSEY; NEW	:	
JERSEY DEPARTMENT OF	:	Trial Court Docket No.: MER-L-914-19
EDUCATION; DR. ANGELICA	:	
ALLEN-MCMILLAN, in her	:	Sat Below:
official capacity as Commissioner	:	Hon. Robert T. Lougy, A.J.S.C.
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 MANUAL M. DA SILVA, in	:	
his official capacity as Interim	:	
CEO of the Schools Development	:	
Authority,	:	
	:	
Respondents.	:	

**RESPONDENTS' BRIEF AND APPENDIX IN OPPOSITION TO
APPEAL**

Date Submitted: March 21, 2024

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PRELIMINARY STATEMENT

Following decades of Abbott litigation, extensive research, and consultation with numerous experts, the Legislature enacted the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -71. That legislation overhauled the prior system of school funding and replaced it with a unitary, weighted, and wealth-equalized formula. As a unitary formula, the SFRA applies the same funding principles to all districts. As a weighted formula, the Department of Education calculates an adequacy budget for each district based on a district's particular demographics, with additional resources assigned for its students with higher needs. And as a wealth-equalized formula, funding under the formula is a shared responsibility of each district and the State, based on districts' relative property and income wealth. These three signature features of the SFRA are essential to achieving the overriding legislative goals of ensuring that all districts can provide a thorough and efficient education, while also allocating finite State resources based on each district's individual needs and ability to contribute locally.

The SFRA formula is also dynamic. Recognizing that district populations and relative wealth change and evolve, the Legislature required an annual recalculation of the adequacy budget and of districts' ability to contribute locally so that the State can adjust aid based on those factors. And both the Supreme

Court and the Legislature understood that additional recalibrating of the formula would be necessary once it was implemented. Thus, beginning in 2017, the Legislature identified inequities that had developed over time and took steps to address them. In particular, the Legislature was concerned that the persistence of transitional aid provided by the State to districts that were not meeting their presumed local contribution prevented the State from allotting resources to other needy districts, forcing them to overtax.

The Jersey City School District was one of those districts. The City had seen an explosion in its property values and income, yet the Jersey City Board of Education (JCBOE) failed to raise its local tax levy to reflect Jersey City's increased wealth. So, in 2018, the Legislature amended the SFRA to implement a gradual phase-out of transitional aid, while providing affected districts with new tools to meet their local contributions. One of the tools provided to districts like Jersey City was an increase in the cap placed on tax levies, to allow for additional funds to be raised from property taxes. Another new tool at JCBOE's disposal was the ability to raise funds through a payroll tax, which was designated to be used exclusively for school purposes. Both of these measures were intended to help districts like Jersey City reach their local funding obligations while phasing them out of adjustment aid, as the Legislature had always intended to do.

Upset by the Legislature's call for wealthier districts to contribute more toward their students' education, JCBOE, along with one individual plaintiff (collectively "appellants"), brought this action claiming the State is constitutionally required, through increased aid at the expense of other districts in the State, to make up for the "shortfall" in its local contribution. JCBOE alleged disastrous consequences would result from the implementation of the SFRA amendments and decreased State aid. On cross-motions for summary judgment, the trial court disagreed with appellants and dismissed their complaint.

School funding is not just the State's responsibility. Rather, local school districts and the State share in the funding of public education. And the SFRA bases a district's ability to contribute to its students' education on its relative property and income wealth. The undisputed facts show that JCBOE has the ability to contribute more toward its students' education. And if JCBOE could not provide a thorough and efficient education to its students, all it had to do was raise its local tax levy. JCBOE's challenge amounts to little more than an effort to avoid paying its fair share. Appellants' complaint was properly dismissed, and the trial court's order and decision granting summary judgment in favor of respondents should be affirmed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

A. The School Funding Reform Act of 2008.

Through its Robinson and Abbott decisions, the Supreme Court of New Jersey has a long history of addressing the State's obligation to provide a thorough and efficient education (T&E) to its public school students, as required by the New Jersey Constitution, through review of the State's school funding formula. See N.J. Const. art. VIII, § 4, ¶ 1 (T&E clause) (“[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 the children in the State between the ages of five and eighteen years”). In an effort to provide a funding formula that satisfied the T&E clause and the Court's Abbott mandates, in January 2008 the State enacted a new statewide school funding formula: the SFRA. L. 2007, c. 260; N.J.S.A. 18A:7F-43 to -71.

The SFRA was enacted as part of New Jersey's ongoing effort to ensure that public schools throughout the State receive the financial support needed to deliver T&E; it effectively overhauled the prior system of school funding. N.J.S.A. 18A:7F-44; Abbott v. Burke (Abbott XX), 199 N.J. 140, 144, 147-48, 152 (2009); Abbott v. Burke (Abbott XIX), 196 N.J. 544, 549, 552-53 (2008);

¹ The procedural history and statement of facts have been combined to avoid repetition and for the court's convenience.

(Aa5).² Through the SFRA, the Legislature endeavored to create a “clear, unitary, enforceable statutory formula to govern appropriations for education.” N.J.S.A. 18A:7F-44(g); (Aa5).

1. The Adequacy Budget.

The Legislature sought to accomplish the salutary goals of the SFRA by employing a structure of school funding through which districts fund their budgets using a combination of local levy and State aid. Ibid.; (Aa5).³ The core of this structure is the adequacy budget, which is designed to support the majority of educational resources needed by children in each district. N.J.S.A. 18A:7F-51; (Aa5). Specifically, the adequacy budget is an estimate of what it costs each district to provide the core curriculum content standards (CCCS)⁴ to each student according to the district’s enrollment and student characteristics —

² “Aa” refers to appellants’ appendix; “Ab” refers to appellants’ brief; “Ra” refers to respondents’ appendix.

³ The SFRA provides for several categories of State aid. See, e.g., N.J.S.A. 18A:7F-52, -54 to -58 (equalization, preschool, special education, security, transportation, and adjustment aid, respectively). Abbott XX, 199 N.J. at 155-57; (Aa5). “State aid” is therefore a term that encompasses multiple categories of aid.

⁴ The CCCS, which the Supreme Court found as a reasonable expression of constitutionally sufficient T&E in Abbott v. Burke (Abbott IV), 149 N.J. 145, 161-62 (1997), and Abbott XIX, are now known as the New Jersey Student Learning Standards (NJSLs). See N.J.A.C. 6A:8-1.1 to -3.3; N.J.S.A. 18A:7F-4.1 to -4.7.

it is not an approved school district budget. Compare N.J.S.A. 18A:7F-51 (providing formula for calculating adequacy budget) with N.J.S.A. 18A:7F-5(c) (requiring each district to adopt and submit to the Commissioner “a budget that provides for [T&E]”); (Aa5).

The adequacy budget is calculated on a per-pupil base cost that reflects the cost of educating an elementary school student with no special needs — with the addition of weighted adjustments to reflect the additional costs of educating middle and high school students, at-risk and Limited English Proficient pupils, and students requiring special education. Abbott XX, 199 N.J. at 153; N.J.S.A. 18A:7F-51; (Aa5). These per-pupil base costs and associated weights were established by the Department after years of study and consultation with experts to ascertain the set of school district resources adequate to enable students to meet New Jersey’s academic performance expectations. Abbott XX, 199 N.J. at 153; (Aa5; Aa107⁵). The resources identified were based on “a series of hypothetical school scenarios and did not specifically examine any existing school or district in the state.” (Aa107; Aa1104).

As the Department explained when introducing the funding formula, the adequacy budget is “perhaps best viewed simply in terms of identifying an

⁵ The Department’s Report on the Cost of Education was included in respondents’ motion for summary judgment, but was omitted from that portion of appellants’ appendix as duplicative. (Aa1264).

overall level of funds which should be available to purchase personnel, resources, and programs as individual school or district leaders see fit.” (Aa5; Aa107; Aa1104; Aa1871). That approach “gives the flexibility to educators to decide how best to meet the specific needs of their students.” (Aa6; Aa107; Aa1105; Aa1871). It is not a necessary or required level of funding that the State must provide. (Aa1105; Aa1233). Instead, the Department uses the adequacy budget calculation in its formula for determining both a district’s local share, and its State aid. N.J.S.A. 18A:7F-51 to -53; Abbott XX, 199 N.J. at 152; (Aa6).

2. The Local Fair Share.

A significant distinction between the SFRA and older school funding formulas is that “virtually all aid under the new formula is wealth equalized.” Abbott XIX, 196 N.J. at 556; (Aa6). This means that while the SFRA allocates aid to school districts, it “requir[es] certain levels of funding at the local level.” Abbott XX, 199 N.J. at 152. As a result, “[e]ach district contributes to its adequacy budget an amount that is based on its ability to raise local revenue.” Abbott XIX, 196 N.J. at 556-57; (Aa6; Aa1105).

This local portion, commonly referred to as the “local fair share” or “LFS,” is calculated by “indexing the district’s property wealth and aggregate income using statewide multipliers.” Abbott XIX, 196 N.J. at 556-57; (Aa6;

Aa1105; Aa1256; Aa1260-61); see also N.J.S.A. 18A:7F-5(b) and -52(a). A district “must provide the lesser of either its LFS, as calculated using SFRA’s formula, or the local share it raised in the previous year” — often referred to as the “required local share.” Abbott XX, 199 N.J. at 155; N.J.S.A. 18A:7F-5(b); (Aa6; Aa1105; Aa1257). So a district’s presumed contribution to its annual budget is the amount of funds, based on its relative wealth, which may be raised through local taxes to support the district’s annual budget. N.J.S.A. 18A:7F-52; N.J.S.A. 18A:7F-5(b) and (c); (Aa6; Aa1105). The LFS is also not static, but must be annually recalculated to capture current property wealth and income of each district. N.J.S.A. 18A:7F-52(c).

3. Equalization Aid.

Once the adequacy budget and LFS are calculated, the Department computes the allocation of “equalization aid” for each district. (Aa7; Aa1104; Aa1255; Aa1871). Equalization aid is an aid category that the State provides to each district for general fund expenses to support the district in meeting the CCCS. N.J.S.A. 18A:7F-53; (Aa7). It is calculated by subtracting the district’s LFS from its adequacy budget, provided that equalization aid shall not be less than zero. Ibid.; (Aa7). “In short, equalization aid is the difference between a district’s LFS and its Adequacy Budget.” Abbott XX, 199 N.J. at 155.

Therefore, equalization aid is calculated based on a district's ability to contribute toward its adequacy budget through its LFS. N.J.S.A. 18A:7F-53.

The formula for calculating equalization aid under the SFRA carries with it certain critical characteristics to ensure sufficient funding for the provision of T&E. Under the statute, each district's need is represented by its Adequacy Budget, which is based on the particular demographic makeup of the district. Abbott XX, 199 N.J. at 152; N.J.S.A. 18A:7F-44(d) and -53. State aid, in turn, is calculated based on each district's income and property wealth, so that funding under the formula is a shared responsibility of each district and the State. Abbott XIX, 196 N.J. at 557; Abbott XX, 199 N.J. at 154-55; (Aa36-37). And the SFRA applies the same funding principles to all districts; no district is supposed to get special treatment. Abbott XX, 199 N.J. at 152, 173-74; N.J.S.A. 18A:7F-44(g).

4. Adjustment Aid.

Because the SFRA was a "new form of a constitutional funding formula" when it was enacted in 2008, it was commonly understood that there would be a period of transition. Abbott XX, 199 N.J. at 164-65. To assist districts' transition into the new formula, the SFRA provided "adjustment aid" to a district if the sum total of State aid (all categories of K-12 aid) was less than the district's FY2008 State aid allocation plus two percent. N.J.S.A. 18A:7F-58.

Since it ensured that a district maintained its FY2009 funding level, adjustment aid could reasonably be viewed as hold harmless aid. In providing for adjustment aid, the Department also recognized that “a district is required to pay the lesser value of the LFS or last year’s tax levy. To make up the difference in the amounts, SFRA provides for Adjustment Aid during the transition period.” Abbott XX, 199 N.J. at 165.

So adjustment aid was intended to assist districts that were not able to raise the full amount of their LFS immediately.⁶ And by providing for a gradual increase in local contribution, the formula reduced the risk of municipal overburden. Abbott XX, 199 N.J. at 233.⁷ As the Supreme Court observed, adjustment aid was a temporary measure for “those districts that are unable to raise their LFS in future years.” Abbott XX, 199 N.J. at 166. Thus, it was

⁶ As a corollary to adjustment aid, another form of state aid — Educational Adequacy Aid (EAA) — was incorporated into the SFRA to assist the transition of Abbott districts into a unified funding formula, and to ameliorate possible municipal overburden. N.J.S.A. 18A:7F-58; Abbott XX, 199 N.J. at 157.

⁷ “Municipal overburden is ‘a condition in many poorer districts where the cost of local government . . . is so high that the municipality and the school district are reluctant to increase taxes for any purpose, including education.’” Abbott XX, 199 N.J. at 181 n.3 (quoting Abbott v. Burke (Abbott II), 119 N.J. 287, 325 (1990)). JCBOE does not argue on appeal that the District sustained municipal overburden. As such, that allegation is waived. See Telebright Corp., Inc. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (issues not raised on appeal are waived).

expected “that eventually every district will be able to contribute their LFS, but as the Commissioner testified, ‘they don’t have to do that overnight.’” Ibid.

B. The Supreme Court’s Determination That the School Funding Reform Act Is Constitutionally Sound.

In Abbott XX, 199 N.J. at 175, the New Jersey Supreme Court conducted a thorough evaluation of the newly enacted SFRA and determined that “[t]he legislative and executive branches of government have enacted a funding formula that is designed to achieve a thorough and efficient education for every child, regardless of where he or she lives.” Thus, it concluded the “SFRA is a constitutionally adequate scheme.” Ibid.

In reaching this conclusion, the Court acknowledged the many concerns and objections to the formula made by the Abbott plaintiffs. In particular, the Court considered the argument, raised by JCBOE in this matter, that statutory limits on annual local levy increases “will prevent the Abbott districts from reaching their LFS in order to fund their Adequacy Budget.” Id. at 165. The Court responded that in addition to adjustment aid, the SFRA “provides for periodic review measures, specifically requiring that the Commissioner study the limitations on growth levels in the districts and their abilities to meet the LFS.” Ibid. Thus, the Court contemplated that further statutory adjustments might be necessary once the SFRA was implemented. But it concluded that “[t]he political branches of government. . . are entitled to take reasoned steps,

even if the outcome cannot be assured, to address the pressing social, economic, and educational challenges confronting our [S]tate.” Id. at 175.

A few years later, the Court revisited SFRA in Abbott v. Burke (Abbott XXI), 206 N.J. 332, 370 (2011), due to funding shortages. (Aa7). The Court reconfirmed the constitutionality of the SFRA funding scheme. Id. at 369-70 (directing that funding to the Abbott districts be calculated and provided in accordance with the SFRA); (Aa7).

C. Tax Levy Growth Limitation.

At roughly the same time that State policymakers were restructuring the school funding formula, they were also tackling another looming crisis facing New Jersey: high and increasingly escalating local property taxes. In April 2007 the Legislature enacted L. 2007, c. 62, which imposed a 4% limitation on school district and municipal tax levy increases. L. 2007, c. 62 §§ 1-2; N.J.S.A. 18A:7F-38 and -39.

In July 2010, the Legislature further revised the tax growth limitation provisions, which had been set to expire in 2012, imposing further restrictions on local tax levy increases, and reducing the amount by which local tax levies could increase from 4% to 2%. L. 2010, c. 44, § 4; N.J.S.A. 18A:7F-38. And for school districts, the new law eliminated a number of cap “exemptions,” limiting them to adjustments for enrollment increases and for increased costs for

health care and pension contributions. L. 2010, c. 44, §§ 4-5. It also permitted districts to submit a special question to the voters to increase the levy above the capped amount under certain circumstances, L. 2010, c. 44, § 5, and to “bank” any portion of the permitted 2% increase plus applicable adjustments not used by the school district in a budget year.

D. The Jersey City Public School District.

1. Background and Transition From State Control.

The Jersey City Public School District is one of the original Abbott districts. See Abbott v. Burke (Abbott I), 100 N.J. 269, 277 (1985). In 1989, the State took control of the District because of its inability to provide T&E to its students. See McCarroll v. Bd. of Educ. of Jersey City, 4 S.L.D. 2337 (1989); (Aa1134). In the years since, the District worked with the Department to improve its schools and began transitioning back to local control. (Aa1134-35; Aa1172-77).

In 2008, the same year that the SFRA was originally enacted, the State returned governance and fiscal management back to District control. (Aa1172-77). With the return of governance, the citizens of Jersey City elected to become a Type II District with an elected board of education, and JCBOE regained and exercised its authority to appoint a superintendent to manage the District’s operations. (Aa1135; Aa1176). With respect to fiscal management, in the years

following 2008-09, JCBOE assumed authority over budget planning and approval, fiscal oversight, and compliance with State and federal requirements. (Aa1135; Aa1176). The internal audit team, established to monitor the District's business functions and report its findings to the Commissioner, was disbanded. (Aa1176); see also N.J.S.A. 18A:7A-41 (establishing an internal audit team within a school district under full State intervention).⁸

The District also continued to make steady gains in instruction and student achievement. Between 2012 and 2017, its four-year graduation rate rose over 10 points, from 67.3% to 77.2%. (Aa1136). The number of students participating in advanced placement courses increased by nearly 40% during the same period. Ibid. Student achievement on State assessments also showed gains across the board, indicating that the District closed the achievement gap between it and other districts. (Aa1136-37). Based on these and other developments, on July 5, 2017, the area of instruction and programming was returned to local control.⁹ (Aa1209-11). JCBOE's evaluations still continued to show consistent improvements. (Aa1248-52). In fact, the highly skilled professionals assigned

⁸ The State returned operations and personnel to local control in 2016, executing separate transition plans with respect to each. (Aa1178-1205).

⁹ Because of this progress, in 2017 the State Board of Education voted to initiate the return of full local control. (Aa1209-11).

to assist JCBOE with its transition noted it passed three consecutive budgets in fiscal year (FY) 2019, FY2020, and FY2021 with no impact to the classroom and no major layoffs. (Aa1120; Aa1247).

On September 14, 2022, the Commissioner of Education formally recommended certifying the District as high performing on the New Jersey Quality Single Accountability Continuum (NJQSAC), based on a comprehensive accountability office report and a transition report showing gains in student achievement. (Ra31; Ra32-37).¹⁰ As a result, the State Board of Education adopted a resolution returning Jersey City Public Schools to full local control. (Ra38-39).

2. Jersey City's Financial Condition.

As for Jersey City's financial condition, the municipality has maintained school and total tax levies that were consistently below the State average. (Aa1113-1116; Aa1461). In 2009, according to the property tax tables publicly maintained by the Department of Community Affairs (DCA), the average residential property value in Jersey City was \$93,704, and the average total property tax bill was \$5,605. (Aa9; Aa1113; Aa1461; Aa1873). Jersey City's average school tax bill was \$1,525. (Aa9; Aa1113-14; Aa1461; Aa1874). By

¹⁰ Although not included in appellants' appendix, the documents set forth in respondents' appendix — all of which are public documents — were cited in respondents' briefs on summary judgment.

comparison, the State average residential property value that year was \$290,502, with an average total property tax bill of \$7,281. (Aa9; Aa1113; Aa1461; Aa1873). The State average school tax bill in 2009 was \$3,869. (Aa9-10; Aa1114; Aa1461; Aa1874).

The City's school tax levy remained comparatively low, despite the City's substantial increase in wealth and property value over time. In calendar year 2018, Jersey City's average residential property value was \$433,320, compared with the State average of \$316,710. (Aa1461). According to property tax tables, the average total property tax bill per household in Jersey City was \$6,445, of which \$1,559 was the school levy; while the State average total property tax bill was \$8,767, of which \$4,610 was the school levy. Ibid. In 2021, its average residential property value was \$461,925, compared to the State average of \$355,623. (Aa10; Aa1114; Aa1874). Its average total property tax bill was \$7,406, of which \$2,752 was the school levy; whereas the State average total property tax bill was \$9,284, of which \$4,908 was the school levy. (Aa10; Aa1114; Aa1874).

Jersey City also has a history of granting tax abatements to certain large property owners, thus artificially decreasing the local tax base available for school funding. (Ra7). Through these tax abatements (see N.J.S.A. 40A:20-1 and N.J.S.A. 40A:21-1), municipalities like Jersey City exempt certain property

owners, usually businesses, from paying property taxes. (Ra7). In exchange, the businesses are typically required to make “payments in lieu of taxes” (PILOTs) to the municipality. Ibid.

For long-term abatements, the municipality retains 95% of the PILOT (the other 5% goes to the county), and “[i]n many cases, the negotiated PILOT provides more funds to the municipality than it would have otherwise received.” (Ra8). But importantly, the school district, which would typically receive “a large portion of traditional property tax collections — sometimes more than half,” (Ra15), does not receive any portion of the PILOT payment. (Ra8-9, Ra15). And for long-term abatements, the PILOT payment is not reflected in the municipality’s “ratable base, meaning formula state aid continues to provide enhanced funding based on artificially low community wealth.” (Ra15).

3. The District’s Funding Under the School Funding Reform
Act.

From FY2008-09, when the SFRA was enacted, until the present time, the amount JCBOE actually contributed to its school budget through its local tax levy was significantly less than its LFS as calculated under the SFRA. (Aa1110-12; Aa1873). For instance, in FY2009, JCBOE’s LFS was calculated at \$196,262,527, but it contributed only \$86,122,268 through its local levy. (Aa331; Aa347; Aa1110; Aa1459-60; Aa1873). Between then and FY2022, JCBOE’s LFS has increased by 171%, from \$196,262,527 to \$532,807,366,

reflecting a dramatic evolution in the District’s income and property wealth relative to other districts in the State. (Aa1110-12; Aa1873).

Due to JCBOE’s rising LFS, coupled with the impact of tax abatements and tax levy caps, over this period JCBOE continued to under-tax as compared to its LFS. (Aa10-11; Aa1110-12; Aa1459-60; Aa1873). For example, in FY2018, JCBOE’s LFS was calculated at \$370,261,455, yet it contributed only \$116,692,448 through its local levy. (Aa718; Aa728; Aa1111-12; Aa1460; Aa1873). In FY2020, JCBOE’s local levy of \$136,504,704 was 28% of its LFS of \$474,039,468. (Aa1112; Aa1509; Aa1518; Aa1873). In FY2021, JCBOE’s LFS was calculated at \$522,089,435, but it contributed \$189,234,798 (or \$332,854,637 less than its LFS), through its local levy. (Aa1112; Aa1519; Aa1528; Aa1873). And in in FY2023, its local levy of \$426,247,606 was more than 80% of its LFS of \$532,016,412. (Aa1112; Aa1147; Aa1538; Aa1873).

Moreover, in looking at the funding JCBOE has received under the SFRA, JCBOE has consistently received more funding than it should have received before aid growth caps were applied or adjustment aid was calculated (“uncapped aid”):

Fiscal Year	Uncapped State Aid	Actual K-12 State Aid	Amount over Uncapped	% Over Uncapped Aid
FY2009	\$306,574,506	\$417,733,738	\$111,159,232	36.3%

FY2010	\$307,786,723	\$417,733,738	\$109,947,015	35.7%
FY2011	\$290,947,588	\$391,023,629	\$100,076,071	34.4%
FY2012	\$301,827,281	\$417,859,149	\$116,031,868	38.4%
FY2013	\$303,205,542	\$417,859,150	\$114,653,608	37.8%
FY2014	\$309,098,776	\$417,859,150	\$108,760,374	35.2%
FY2015	\$308,317,677	\$418,471,290	\$110,153,613	35.7%
FY2016	\$306,778,250	\$418,859,260	\$112,081,010	36.5%
FY2017	\$286,939,364	\$418,779,890	\$131,840,526	45.9%
FY2018	\$258,849,750	\$410,404,292	\$151,554,542	58.5%
FY2019	\$236,126,258	\$406,904,292	\$170,778,034	72.3%
FY2020	\$197,604,778	\$379,711,659	\$182,106,881	92.2%

[(Aa1458-59).]

For example, in FY2009, JCBOE's uncapped aid was \$306,574,506, but it actually received \$417,733,738 in State aid — 36.3% more than the uncapped aid. (Aa1106; Aa1458-59; Aa1872). This trend continued over the years. For example, in FY2016, JCBOE's uncapped aid under the SFRA formula was \$306,778,250, but JCBOE received \$418,859,260 in State aid — 36.5% over the uncapped aid. (Aa523; Aa1108; Aa1458-59; Aa1496; Aa1872).

Between FY2017 and FY2019 that percentage substantially increased each year, eventually surpassing 72%. (Aa1108-09; Aa1458-59; Aa1872). In FY2021, JCBOE was to receive \$139,071,799 in State aid under the formula, but it received \$324,393,336 — which was 133.3% above the uncapped formula. (Aa1109; Aa1523-24; Aa1458-59; Aa1872). Overall, the excess over uncapped formula aid received by JCBOE jumped from \$111,159,232 in FY2009, to \$185,321,537 in FY2021, even as the District’s LFS and concomitant capacity to shoulder a greater share of its education costs also significantly increased. (Aa1106-09; Aa1458-59; Aa1872).

E. Statutory Amendments and Their Effect on Jersey City.

In 2017, mindful of the Supreme Court’s directive to subject the formula “to periodic reexamination and retooling as necessary to keep the formula operating with equity, transparency, and predictability,” Abbott XX, 199 N.J. at 174, the State began taking steps to address certain school funding inequities, such as those illustrated by JCBOE’s experience, that had developed over time. See generally Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Jan. 27, Feb. 2, 14, and 22, 2017); (Aa7). Of particular concern to the Legislature was the issue of “overfunding” and “underfunding[.]” Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Jan. 27, 2017), at 5, 17, 18-19, 102; Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Feb. 2,

2017), at 30, 35; Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Feb. 14, 2017), at 27-28, 32, 41, 43, 46, 63, 73, 77, 79-80; Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Feb. 22, 2017), at 3, 10, 21-22, 25, 31, 34, 36-37, 40-43, 49, 51, 58, 60, 63, 69-71, 74, 77, 90, 93-95, 99, 101, 111, 125; (Aa7). The Legislature was concerned, due in large part to the continuation of adjustment aid and the impact of the tax levy caps, that some districts were receiving more State aid than they should under the formula, to the detriment of other districts that were receiving less aid than they should. Ibid.

1. Revisions to the Formula for the 2018 and 2019 Budget Years.

Policymakers began to address these serious issues in the FY2018 budget, which included an overall increase in K-12 aid of approximately \$103 million over FY2017. (Aa1118; Aa1460; Aa1875). The FY2018 Appropriations Act allocated school aid so that districts whose proposed aid amount was less than its uncapped aid (as determined under the SFRA) would receive an increase calculated as the amount underfunded, multiplied by the percent underfunded, multiplied by a proration amount specified in the legislation. L. 2017, c. 99. Likewise, districts whose proposed aid amount was more than its uncapped aid — those that were overfunded — would receive a decrease in aid. Ibid. In 2017-18, Jersey City raised a local school levy of \$116,692,448, approximately 32% of its LFS. (Aa1112; Aa1457; Aa1873). In the same fiscal year, JCBOE

received \$410,404,292 in K-12 formula aid. (Aa1109; Aa1457; Aa1872). But, the amount calculated according to the SFRA formula, without growth caps or adjustment aid (or the uncapped aid), was \$258,849,750. Ibid. Based on the changes in the FY2018 Appropriations Act, and because JCBOE's original proposed aid amount was greater than its uncapped amount under the SFRA — in essence overfunding — JCBOE's FY2018 actual K-12 State aid was \$8.4 million less than the actual aid it received in FY2017.¹¹ (Aa1108-09; Aa1459; Aa1872).

The FY2019 budget included an overall increase in K-12 aid of \$351 million over FY2018. (Aa1118; Aa1460; Aa1875). As part of the ongoing effort to address funding inequities, the FY2019 Appropriations Act established a comparison between the actual formula aid that a district received in the prior year and the amount that it should have received before aid growth caps were applied or adjustment aid calculated (uncapped aid). L. 2018, c. 53 and 54; (Aa8). In general, the formula for calculating state aid was as follows: if the district's prior year State aid was less than uncapped aid, the district received an increase in State aid. Ibid.; (Aa8). But if the district's prior year State aid was more than uncapped aid, the district saw a decrease. Ibid.; (Aa8).

¹¹ JCBOE received \$418,779,890 in actual K-12 formula aid in FY2017. (Aa1108; Aa1459; Aa1872).

The FY2019 Appropriations Act also required that “[a]ny reduction in State aid pursuant to this provision shall first be deducted from the amount of adjustment aid in the school district’s March 2018 aid notice.” Ibid.; (Ra57; Aa8). In other words, more than a decade after the SFRA’s enactment, the Legislature began explicitly phasing out the “transitional assistance” represented by Adjustment Aid. Ibid.; (Aa8). Thus, in FY2019, because JCBOE’s prior year K-12 aid of \$410.4 million exceeded its prior year uncapped aid of \$258 million, it saw a reduction in adjustment aid in the amount of \$3.5 million. (Aa1109; Aa1459; Aa1872).

2. Chapter 67: Amendments to the School Funding Reform Act.

At the same time that it enacted the FY2019 Appropriations Act, the Legislature also amended the SFRA through L. 2018, c. 67 (Chapter 67). (Aa7-8). Chapter 67 incorporates a similar calculation as that used in the FY2019 Appropriations Act, defining a “state aid differential,” which is a measure of how overfunded or underfunded a district is, and using it to calculate gains and losses to districts. Compare L. 2018, c. 53 and 54 with L. 2018, c. 67, §§ 1, 3, 4(a), 4(b), 4(d). Districts with a positive State aid differential (i.e., overfunded districts) receive a reduction in State aid equal to a gradually increasing percentage of the State aid differential, from a 13% decrease in the State aid differential in the 2019-20 school year, to a 100% decrease in the differential in

the 2024-25 school year. L. 2018, c. 67, §4(b); N.J.S.A. 18A:7F-68(b). Chapter 67 also provides that districts that are underfunded shall receive a proportionate share of the excess aid that was recaptured from overfunded districts. See, L. 2018, c. 67, §4(a); N.J.S.A. 18A:7F-68(a). In FY2020, Jersey City was overfunded — meaning that it had a positive State aid differential (its prior year K-12 aid of \$406,904,292 exceeded its prior year uncapped aid of \$236,126,258 as calculated under the SFRA formula) — and thus it experienced a 13% reduction in its State aid differential, which amounted to \$27 million. (Aa1109; Aa1459; Aa1872).

To help offset future losses in State aid, Chapter 67 also provided some districts with new tools to make up the lost revenue.¹² Recognizing that many districts are levying a school tax that is well below the LFS, Chapter 67 amended the required local share. L. 2018, c. 67, §§ 1-2; N.J.S.A. 18A:7F-5d and -70. Thus, in FY2020 through FY2025, certain districts that receive decreased aid under the amendments are required to increase their tax levy by 2% over the prior year. L. 2018, c. 67, § 2; N.J.S.A. 18A:7F-5d; (Aa8). And certain SDA

¹² Chapter 67 did preserve districts' existing options for raising local funds, such as the increase of its local levy from year to year, the availability of banked cap, N.J.S.A. 18A:7F-39(e), and the ability to raise additional funds outside the tax levy growth limitation, see N.J.S.A. 18A:7F-39(c) and N.J.S.A. 18A:22-40.

districts¹³ (including Jersey City) are provided an adjustment to the levy cap that allows those districts to increase their levy up to LFS. L. 2018, c. 67, § 6 (amending N.J.S.A. 18A:7F-38). With these amendments, certain districts that have been “overfunded” are required to contribute more on the local level, although the amendments did not require them to raise their local levy up to their LFS.

The legislation also contains more guardrails to protect against municipal overburden. For instance, it provides that SDA districts spending below adequacy and located in municipalities in which the equalized total tax rate is greater than the Statewide average equalized total tax rate will not be subject to a reduction in State aid. N.J.S.A. 18A:7F-68(c). And because those districts experience no reduction in aid, they are not required to increase their levies over the prior year by 2%. N.J.S.A. 18A:7F-5d. Also, SDA districts spending above adequacy with an equalized total tax rate in excess of the Statewide average equalized total tax rate will be subject to a proportionate aid reduction that does

¹³ The school districts from the Abbott cases were historically referred to as “Abbott districts” and eventually included thirty-one districts in the State. Abbott XXI, 206 N.J. at 406. Effective January 13, 2008, the Legislature eliminated that designation and replaced it with a new one, “SDA district,” L. 2007, c. 260, § 39, which refers to districts who receive enhanced State funding and oversight for school facilities from the Schools Development Authority (SDA), pursuant to the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:7G-1 to -48.

not exceed the amount by which the district is spending above adequacy. N.J.S.A. 18A:7F-68(c).

In 2018, Jersey City's total equalized property tax rate of 1.502% was well below the Statewide average equalized total property tax rate of 2.287%. (Aa1460). In other words, Jersey City was both taxing well below its LFS, and not experiencing municipal overburden. And since the implementation of the amendments, the tax rate has remained low — Jersey City's equalized tax rate in 2021 was 1.402%, compared to the State average of 2.197%. (Aa1114-15; Aa1874).

3. Chapter 68: Amendments to the Local Tax Authorization Act.

The Legislature also amended the Local Tax Authorization Act (LTAA), N.J.S.A. 40:48C-1 to -42, to make population the lone qualification requirement for imposition of a payroll tax. L. 2018, c. 68, § 1 (Chapter 68); (Aa12). But it also added a sub-classification, whereby eligible municipalities with “a median household income of \$55,000 or greater” shall deposit the revenue from any payroll tax “into a trust fund to be used exclusively for school purposes.” Ibid.; (Aa12).

Because Jersey City meets the statutory population threshold (200,000), it is eligible to impose a payroll tax. Ibid. And because Jersey City has a median household income over \$55,000, the proceeds from any payroll tax must be used

for school purposes. Ibid.; see also Assembly Budget Comm. Statement to A. 4163 (June 18, 2018) (explaining the purpose of Chapter 68 was to give Jersey City another method for raising “revenues for school purposes”). As a result, on November 20, 2018, Jersey City enacted Ordinance 18-133, establishing an employer payroll tax under the LTAA. (Aa208-18; Aa1116; Aa1874). On May 31, 2022, the Supreme Court upheld the constitutionality of the ordinance and the corresponding portion of the LTAA, finding that it did not violate the State and federal Constitutions. Mack-Cali Realty Corp. v. State, 466 N.J Super. 402 (App. Div. 2021), aff’d o.b., 250 N.J. 550 (2022).

The City initiated collection of the payroll tax in April 2019. Since the payroll tax was enacted, Jersey City has made payments to JCBOE of \$3,500,000 in FY2019; \$30,692,633 in FY2020; \$86,010,956.00 in both FY2021 and FY2022; and JCBOE received \$65,000,000 to supplement its FY2023 budget. (Aa13; Aa1117-18; Aa1345; Aa1608; Aa1538; Aa1642; Aa1875).

F. Appellants’ Lawsuit and Procedural Background.

On April 29, 2019, JCBOE and E.H., a minor by his guardian ad litem Shanna C. Givens, filed an order to show cause (OTSC) and two-count verified complaint in the Hudson County Vicinage, alleging that the SFRA is unconstitutional (Count I), and challenging the SFRA amendments (Count II).

(Aa53-104). Appellants named as defendants the State of New Jersey, the Department of Education, Dr. Lamont Repollet (in his official capacity as Commissioner of Education),¹⁴ the New Jersey Office of Management and Budget, the New Jersey Department of Treasury, and Elizabeth Maher Muoio (in her official capacity as New Jersey State Treasurer). Ibid.

The matter was transferred to the Mercer County Vicinage, and on June 6, 2019, JCBOE withdrew its OTSC and preliminary injunction request, citing Jersey City Mayor Stephen Fulop’s acknowledgement that the Jersey City payroll tax would generate “sufficient revenue to supplant the Adjustment Aid JCBOE will lose for the 2019-20 school year[.]” and that its cost saving steps would ensure “that the loss of Adjustment Aid in the 2019-20 school year will not have a marked negative effect on educational instruction[.]” (Aa1116; Aa1574; Aa1874).

On July 23, 2019, JCBOE filed an amended complaint, adding an as-applied challenge to the EFCFA as a new count, and naming the SDA and Manuel M. DaSilva (in his capacity as CEO of the SDA), as additional

¹⁴ Angelica Allen-McMillan, Ed.D., served as Acting Commissioner of the Department while this matter was before the trial court. Kevin Dehmer was appointed Acting Commissioner of Education effective February 12, 2024.

defendants.¹⁵ (Aa833-87). And on September 1, 2020, appellants filed a second amended complaint (Amended Complaint) removing plaintiff E.H. and Shanna Givens from the case, and adding G.D. and Nicole Gohde. (Aa990-1043).

In count one of the Amended Complaint, characterized as an as-applied challenge to the SFRA, JCBOE asserted a right to receive State funding that “at a minimum, equals the Adequacy Budget”; alleged that the State “replaced” the SFRA with an underfunded version of the statute; and claimed that failure to fund at the “statutory Adequacy Budget level” violates the New Jersey Constitution. (Aa1030-35). In count two, JCBOE asserted a right to receive State funding “at the level set forth by the Adequacy Budget.” (Aa1036). And it alleged that the Legislature’s decision to amend the SFRA to phase out adjustment aid is unconstitutional. (Aa1036-39). The payroll tax, it claimed, “will not be sufficient” to cover the loss of adjustment aid. (Aa1038). JCBOE framed count three as an as-applied challenge to EFCFA. (Aa1040-42).

At the conclusion of discovery, the parties filed motions for summary judgment. On June 14, 2023, the trial court issued an order and decision granting summary judgment in respondents’ favor, and dismissing the Amended Complaint. (Aa1-45). The judge noted that districts are free to apply their own

¹⁵ Appellants are no longer pursuing their as-applied challenge to the EFCFA. (Ab3).

expertise to meet the unique needs of their district, and that they are not required to set their own budget at the adequacy budget level. (Aa37). And he explained that State aid is fundamentally based on a district's ability to contribute to its budget. Ibid. He also pointed out that Chapter 67 implemented a series of measures to "equitably allocate resources across the State" (Aa39). The judge concluded, therefore, that the SFRA was not unconstitutional as applied to Jersey City. He reasoned that "[t]here is nothing inherently unfair or unconstitutional about calculating State aid based on a district's LFS[,]" and that the State is not responsible for making up the difference when the district does not raise its local fair share. Ibid.

The judge offered seven separate reasons why JCBOE's claims failed. First, relying on Supreme Court precedent, he concluded that it is "constitutional for the State to expect JCBOE to contribute to its budget" and to delegate fiscal obligations to the District. (Aa40). Second, reasoning that the SFRA defines equalization aid as the difference between a district's adequacy budget and LFS, he held "it is not the State's constitutional obligation to subsidize the district's local faire share" Ibid. Third, the judge concluded that adjustment aid was always intended to be a temporary measure, pointing to the gradual schedule for eliminating adjustment aid under N.J.S.A. 18A:7F-68(b). (Aa40-41). Fourth, he found that JCBOE was capable of contributing its local share, but had been

“under-contributing” by virtue of the fact that its ability to contribute increased, and its actual contribution did not rise proportionate to its “dramatic[.]” rise in wealth. (Aa41). Fifth, the judge concluded the amendments to the SFRA are constitutional because “distribut[ing] the cost of education so that it falls more heavily on those districts with the ability to contribute more locally” was an “approach that our Supreme Court found to be constitutionally permissible in Abbott XX.” (Aa42-43). Sixth, the court held that the payroll tax under N.J.S.A. 40:48C-15(d)(3) helped to provide assistance to JCBOE while it transitioned off of adjustment aid. (Aa43). And seventh, the court concluded that JCBOE failed to show that its students were not receiving T&E, as required under Abbott II and Stubaus v. Whitman, 339 N.J. Super. 38, 56 (App. Div. 2001), particularly given the District’s “high performing” NJQSAC rating and its return to full control. (Aa43-44).

This appeal followed.

ARGUMENT

THE TRIAL COURT’S ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS SHOULD BE AFFIRMED BECAUSE THE SCHOOL FUNDING REFORM ACT, AS AMENDED, IS NOT UNCONSTITUTIONAL AS APPLIED TO THE JERSEY CITY SCHOOL DISTRICT.

As the court below concluded, the State was not required to provide additional aid to subsidize Jersey City's funding obligations when it short-changed its local contribution. Jersey City's relative income and property wealth have skyrocketed, and JCBOE cannot deny that the City's obligation to contribute increased proportionate to its economic growth; it did not satisfy that obligation. The issues before the trial court were legal in nature and appropriately decided on summary judgment. Applying the standards promulgated by the Supreme Court, the trial court properly dismissed appellants' claims as a matter of law. Its decision must be affirmed.

This court reviews a trial court's grant of summary judgment de novo, applying the same standard used by the motion judge under Rule 4:46-2(c). Henry v. Dep't of Human Servs., 204 N.J. 320, 330 (2010). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). An "issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid. In order to determine "whether there exists a genuine

issue with respect to a material fact[,]" the court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to a non-moving party . . . are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). In other words, if the evidence presented is so one-sided that the moving party must prevail as a matter of law, "the trial court should not hesitate to grant summary judgment." Id. at 540.

Here, there were no material facts in dispute, and respondents were entitled to summary judgment as a matter of law. On appeal, JCBOE argues that the trial court "failed to analyze" its claims under the standards set forth in Abbott XX. (Ab27). Specifically, it claims that full funding of the adequacy budget is constitutionally required, and if a district fails for whatever reason to pay its share, the State is obligated to make up for the shortfall. (Ab29; Ab33). Not so. There is nothing unconstitutional about calculating State aid based on the assumption that a district will contribute its proportionate local share. JCBOE simply objects to that constitutionally-sound obligation. But it does not dispute the State's calculation of its LFS; it does not dispute the State's calculation of equalization aid; and it does not deny that the City's property and income wealth has dramatically increased over the last decade-plus, which has

led to an increase in the District's local obligations. Moreover, the tools the Legislature provided to JCBOE to offset any decrease in State aid while it raised its local tax levy have worked.

A. There Is No Constitutional Mandate That the State Fully Fund an Adequacy Budget.

JCBOE claims the trial court did not apply the appropriate standards under Abbott XX, and then “failed to analyze the factual record” as to how the SFRA is implemented in Jersey City. (Ab27). It then claims that it is entitled to a heightened standard of individual review because it is an Abbott district, and that under Abbott XX's standards it established a prima facie T&E claim that the State did not meet “required” or “optimal” levels of funding. (Ab27, Ab30-31). JCBOE is wrong. The court did, in fact, apply the appropriate standard of review; and under any standard, its claims fail as a matter of law because it fundamentally misconstrues the purpose of the adequacy budget and how State aid is calculated.

JCBOE's appeal rests on the faulty premise that the State is constitutionally required to bear the financial burden for a district that is not meeting its local obligation to contribute to its students' education. It repeatedly claims that the State failed to fund the District at its “optimal” level, which it claims to mean that the State must fully fund the District's adequacy budget

when there is a shortfall or funding gap between its local contribution and the adequacy budget. (Ab29-31). There is no such requirement.

It is true that the State Constitution requires the Legislature to provide for “a thorough and efficient system of free public schools.” N.J. Const. art. VIII, § 4, ¶ 1. But that does not constrain the State from establishing a system that includes a local responsibility to contribute, so long as the local districts have the tools to meet that obligation. See Robinson v. Cahill (Robinson IV), 69 N.J. 133, 142 (1975) (explaining the State can meet its T&E obligation “by financing education either on a Statewide basis with funds provided by the State, or in whole or in part, by delegating the fiscal obligation to local taxation”). The SFRA does just that.

The adequacy budget is an estimate of what it costs a district to provide the CCCS according to the district’s enrollment and student characteristics. It is not an approved school district budget. Compare N.J.S.A. 18A:7F-51 (calculation of adequacy budget) with N.J.S.A. 18A:7F-5(c) (requiring that each district adopt and submit to the Commissioner “a budget that provides for a thorough and efficient education”). Contrary to JCBOE’s claims, it is not a mandatory level of funding the State must provide. (Ab32). Instead, the Department uses the adequacy budget calculation to determine each district’s State aid. N.J.S.A. 18A:7F-51 and -53.

The adequacy budget was “designed to provide sufficient resources and at the same time to incentivize fiscal efficiency.” Abbott XX, 199 N.J. at 173. Those resources are estimated based on actual salaries and other data from districts across the State. Abbott XIX, 196 N.J. at 554. The formula was fashioned with the goal of generating adequacy budgets that would “‘exceed the requirements necessary’ to provide an adequate education according to the CCCS to all students[.]” Abbott XX, 199 N.J. at 164. But neither Abbott XX nor Abbott XXI required the State to ensure that districts operate at their adequacy budgets. The SFRA was never intended to impose a “cookie cutter” approach to district budgeting decisions. The components of the adequacy budget itself were based on a “series of hypothetical school scenarios” not intended to represent “specific resources or programs” that should be applied in all schools. (Aa107; Aa1104). Precisely because the adequacy budget is not a strict measure of what it costs to provide T&E in each district, local districts are not required to meet their LFS. N.J.S.A. 18A:7F-5(b). The formula expects that districts can provide T&E at a cost less than that calculated in the adequacy budget. They need only raise the “required local share,” defined as the lesser of their LFS or the prior year’s tax levy. N.J.S.A. 18A:7F-5(b); Abbott XX, 199 N.J. at 165.

Thus, districts are free to apply their expertise to determine the most efficient manner of meeting the unique needs of their students, even if that means that they are not spending at the adequacy budget level.¹⁶ Carried to its logical conclusion, JCBOE's suggestion that the State must fully fund an adequacy budget would chip away at districts' autonomy over their own affairs, and require the State to dictate how each district should provide its students with T&E. But the discretion the Legislature afforded districts with respect to their budgets is entirely consistent with the concept of home rule so imbedded in our State — a point JCBOE ignores completely. See, e.g., Robinson v. Cahill (Robinson I), 62 N.J. 473, 493-94 (1973) (describing “signal feature” of home rule as residents of political subdivision, within substantial limits, deciding how much to raise for services).

Imposing a set budget on school districts would effectively strip educators from applying their expertise in determining the best, most efficient manner to ensure that the needs of their students are met. As the Department acknowledged below, some districts in the State are able to provide T&E while

¹⁶ Notably, several provisions in the SFRA contemplate a district spending above or below adequacy. See, e.g., N.J.S.A. 18A:7F-70 (defining data comparison to determine whether a district is spending above or below adequacy); N.J.S.A. 18A:7F-68 (considering whether a district is spending above or below adequacy in determining the amount of reductions in state aid); N.J.S.A. 18A:7F-5d (considering whether a district is spending above or below adequacy in determining its required local share).

spending below adequacy. (Aa1105; Aa1258). Some districts choose to spend above. Ibid. Either way, districts are not absolved of their obligation to take appropriate steps toward locally contributing at a level sufficient to meet their educational needs and budget priorities. Indeed, the statute entrusts districts with the ultimate responsibility to adopt “a budget that provides for [T&E].” N.J.S.A. 18A:7F-5(c).

The Legislature also understood that there may be factors that are not captured in the LFS calculation that could inhibit a district’s ability to raise its full LFS right away. As the Supreme Court has acknowledged, “the SFRA provides various protective measures to alleviate the initial stress placed on the districts due to the requirement that they pay their LFS.” Abbott XX, 199 N.J. at 165 (emphasis added). But that does not relieve districts of their ultimate obligation to contribute their LFS. The Court understood this, noting that “the State expects that eventually every district will be able to contribute their LFS . . .” Ibid.

JCBOE improperly concludes that “optimal” funding from the State under the formula means that “full funding” must be provided by the State according to the adequacy budget. As a result of this misunderstanding, JCBOE claims there have been compounding “shortfalls” in funding to the District since 2012. (Ab32-33). But to be clear: the SFRA defines equalization aid to be paid

by the State as the difference between a district’s adequacy budget and its calculated LFS. N.J.S.A. 18A:7F-53. The formula does not require the State to subsidize the district’s local share to ensure that the district is spending an amount equal to its adequacy budget. Tellingly, while JCBOE goes to great lengths to explain how Abbott XX should be interpreted, the Supreme Court never once said in Abbott XX or even Abbott XXI that an adequacy budget equals T&E, or that the State must perpetually fund a district to “adequacy” if the district refuses to contribute its local share. The Legislature and the Supreme Court in Abbott XX envisioned a scenario where districts would have to do their part and contribute — especially the wealthier ones like Jersey City — so that the State could allocate school aid more equitably to needier districts. Abbott XX, 199 N.J. at 165; N.J.S.A. 18A:7F-44(d). The SFRA is, after all, a unitary and wealth-equalized funding formula that employs a structure of school funding through which districts fund their budgets using a combination of local levy and State aid. That is not a constitutional violation; it is the Legislature’s prerogative, and an approach that the Abbott XX Court found to be constitutionally sound. In colloquial terms: everybody “pitches in,” with districts contributing what they can. JCBOE has simply forgotten the “pitching in” part.

B. Appellants Failed to Establish That the State’s Funding Levels in Jersey City Were Constitutionally Deficient.

JCBOE argues that the SFRA as applied in Jersey City is unconstitutional because it hasn’t been rigorously reviewed and retooled at regular intervals to ensure that it operates at an “optimal level,” (Ab31), and because the District did not receive State funding “at the level of its SFRA Adequacy Budget[.]” (Ab32; Ab37). For the reasons set forth above, JCBOE’s appeal fails as a matter of law because its entire claim is based on a legally incorrect premise. But even turning to the facts on the ground, JCBOE’s appeal falls short.

1. The School Funding Reform Act Was Appropriately Reviewed and Revised In Accordance With the Supreme Court’s and the Legislature’s Mandates.

Few enactments in our State have undergone as much scrutiny as the SFRA. See, e.g., Abbott XIX, 196 N.J. at 548-49 (describing unique history of Abbott litigation and fact that the State, a party, moved for declaration that SFRA’s funding formula satisfied the T&E funding requirements and relief from Court’s orders). Since the Court affirmed the constitutionality of SFRA in Abbott XX, the Legislature has continued its work to refine the formula and fulfill its school funding obligations; its efforts are evidenced by its passage of Chapters 53, 54, and 67. See L. 2018, c. 53; L. 2018, c. 54; L. 2018, c. 67.

Far from mandating that the SFRA be forever frozen in time, the Supreme Court emphasized a “good faith anticipation of a continued commitment by the

Legislature and Executive to address whatever adjustments are necessary to keep SFRA operating at its optimal level.” Abbott XX, 199 N.J. at 146. The Court explicitly acknowledged that the SFRA “shall be subject to periodic reexamination and retooling as necessary to keep the formula operating with equity.” Id. at 174. And that is exactly what happened here: the Legislature amended the SFRA through Chapter 67 to address what, in its opinion, were funding inequities that developed over time. See generally Senate Select Comm., Pub. Hearing on Sch. Funding Fairness (Jan. 27, Feb. 2, 14, and 22, 2017); Senate Select Comm., Sch. Funding Fairness Hearing Notice (Feb. 14, 2017) (inviting testimony on inequities in school funding). By increasing the levy cap, the Legislature acknowledged that certain districts spending under adequacy had the ability to contribute more to their local contribution.

The SFRA amendments followed almost two years of legislative analysis and consideration of funding inequities. See Senate Select Comm., School Funding Fairness Notice (Feb. 14, 2017). As part of these Legislative efforts, adjustment aid was identified as a problem because its guarantee of funding at 2009 levels applied “no matter how overfunded the formula showed that school district to be.” Ibid. And the “growth cap,” conversely, limited increases in school funding and “resulted in severe underfunding of districts with rapid enrollment growth or rising populations of at risk” students. Ibid.

Thus, the establishment of the “state aid differential” specifically addressed that legislative concern, as did the resulting district gains and losses in aid. Chapter 67’s phased-in reduction of adjustment aid for those districts with a positive State aid differential — meaning those districts that have been overfunded — gradually increases the local contribution to the LFS. Further, the Legislature provided districts with new means to address this change by amending the required local share, requiring some districts to increase their local levy by 2% over the prior year, and by adjusting the local levy cap so that certain SDA districts (including Jersey City) can increase their local levy up to LFS. See L. 2018, c. 67 §§ 1-2, 6; N.J.S.A. 18A:7F-5d and -38(c).

Additionally, the State did not expect JCBOE to reach its LFS “overnight,” if at all. It provided a six-year period for the gradual elimination of adjustment aid, from FY2020 to FY2025,¹⁷ during which time the District could incrementally raise its local tax levy, implement budgetary and cost saving measures, or a combination of the two based on its needs and priorities.

Recognizing the challenge faced by JCBOE, the Legislature also provided the additional option of a payroll tax to cushion any levy increase by enabling the municipality to implement a more gradual tax increase over a longer period

¹⁷ Chapters 67 and 68 were enacted in July 2018 to take effect the following fiscal year, thus giving the district an additional year to plan for the funding changes and implement the payroll tax. L. 2018, c. 67; L. 2018, c. 68.

of time, since excess payroll tax receipts in a given year will be banked for use in future years. N.J.S.A. 40:48C-15(d)(3). Chapter 68, which was passed at the same time as Chapter 67, permitted Jersey City to collect a payroll tax that is exclusively dedicated for “school purposes.” L. 2018, c. 68. It further provides that Jersey City shall make monthly payments to the school district (through an established trust fund) “in an amount equal to one-twelfth of the difference in State school aid provided to that school district . . . between the current State fiscal year and State fiscal year 2018, for use in lieu of adjustment aid and all other categories of State school aid.” L. 2018, c. 68, § 1. Chapter 68 offers further sanctuary to JCBOE by mandating that “[a]ny balance remaining in the trust fund shall be reserved for use toward making [such] payments . . . in the event the employer payroll tax revenues collected in a year are insufficient to pay the full amount provided for under that paragraph.” Chapter 68 is thus specifically tailored to assist JCBOE in its efforts to raise its LFS as its adjustment aid is gradually reduced.¹⁸

Although JCBOE disagrees that the SFRA and its amendments provide safety valves to offset what it refers to as “funding shortfalls[,]” (Ab34), as set

¹⁸ Notably, the payroll tax in Jersey City does not violate the T&E clause, as nothing in the Abbott line of cases suggests the T&E clause “prohibits the Legislature from providing a municipality with other revenue raising tools it may employ to supplement its share of school costs with providing its children with an adequate education.” Mack-Cali, 466 N.J. Super. at 426-247.

forth above, there is nothing unconstitutional about requiring a local district to contribute to the cost of educating its children — especially with the type of drastically rising income and property wealth Jersey City enjoys. While it is the State’s obligation to establish an educational system that provides T&E, it may do that “by financing education either on a Statewide basis with funds provided by the State, or in whole or in part, by delegating the fiscal obligation to local taxation.” Robinson IV, 69 N.J. at 142.

And, following extensive legislative hearings, the State made necessary adjustments to the funding formula to allocate State aid on a wealth-equalized basis, as originally intended. With the SFRA amendments, the State took firm steps to realize the promise of the SFRA by distributing the cost of financing education so that it falls more heavily on those districts with the ability to contribute more locally — an approach that our Supreme Court found to be constitutionally permissible in Abbott XX. As a result, the District will be called upon to pay its fair share, just like other districts across the State. While JCBOE may disagree with the decision as a policy matter, it does not equate to a constitutional violation.

2. The Record Demonstrates That the Jersey City School District Received a Constitutionally Adequate Level of State Funding.

That brings us to the factual record in this matter. No remand is necessary, (Ab37-39), because JCBOE's claims fail as a matter of law; and beyond that, the facts on the ground do not support JCBOE's allegations of funding shortfalls.

The record demonstrates that the State has exceeded its share of funding to JCBOE; it is the District that has fallen short. Despite the City's dramatic increase in wealth, the District severely and consistently short-changed its own funding obligations. JCBOE does not dispute the calculation of its LFS; and it ignores the economic boom it has experienced over the years. As the court below found, the undisputed material facts showed that from 2009 to 2021, Jersey City's average property values more than quadrupled, from \$93,407 in 2009 to \$461,925 in 2021, which is well above the State's 2021 average of \$335,623. (Aa9-10; Aa1113-14; Aa1461; Aa1873-74). As a result, its LFS increased more than doubled, commensurate with its wealth. Specifically, its LFS for FY2009 was \$196,262,527, and for FY2021 its LFS was \$522,089,435. (Aa331; Aa347; Aa1110; Aa1112; Aa1459-60; Aa1873). Further, between FY2010 and FY2018, in part because of tax levy caps, JCBOE radically under-taxed compared to its LFS. (Aa10-11; Aa1110-12; Aa1459-60; Aa1873). Due in large part to its continued receipt of adjustment aid, JCBOE received more

aid than it would have received under the SFRA formula. Specifically, from FY2009 through FY2016, JCBOE received aid well over 30% more than its SFRA calculated aid. (Aa1106-08; Aa1458-59; Aa1872). And from FY2017 to FY2022, that percentage steadily increased to over 100%. (Aa1108-09; Aa1458-59; Aa1872). In fact, in FY2021, JCBOE received 133.3% more aid than it would have received under the SFRA formula. (Aa1109; Aa1458-59; Aa1872). JCBOE does not dispute any of this. Ibid.

Although JCBOE argues that the “levy gap” between its actual local levy and the LFS is widening, the facts demonstrate otherwise. In FY2020, JCBOE’s local levy of \$136,504,704 was 28% of its LFS of \$474,039,468. (Aa1112; Aa1873). In FY2023, its local levy of \$426,247,606 was more than 80% of its LFS of \$532,016,412. Ibid. Thus, JCBOE has demonstrated it is entirely capable of contributing its local share, and its artificially-created levy gap is decreasing.

Chapter 68 has also assisted JCBOE while it raised its local tax levy. JCBOE received ample funds from Jersey City through the payroll tax provision to offset the yearly loss in state aid pursuant to the SFRA amendments. (Aa2089-2190). The annual amount deposited into the City’s payroll tax account has been consistent and is rising. Ibid. Specifically, in the partial year of FY2019, \$18.6 million was deposited into the account; \$65.8 million was

deposited in FY2020; \$73.4 million was deposited in FY2021; and \$75.0 million was deposited in FY2022. Ibid.

JCBOE has at its disposal the tools to ensure that it can meet its local contribution and receive its proportionate share of State aid resources, and JCBOE has demonstrated it is capable of contributing its local share. (Aa41).

3. The Record Does Not Support Appellants' T&E Claims.

Finally, it is important to recall that JCBOE's Amended Complaint rested on claims of a T&E violation. But as the court below found, the District failed to show that its students were not receiving T&E. (Aa43).

While funding must be linked to a district's ability to adhere to educational standards and student outcomes, Abbott IV, 149 N.J. at 185-86, JCBOE bore the burden of asserting significant educational deficiencies to prove a T&E claim. See Stubaus, 339 N.J. Super. at 56 (“[b]ecause plaintiffs have not asserted any educational disparities, . . . [Robinson I, 62 N.J. at 515] precludes plaintiffs from maintaining their action based on the T&E constitutional provision”). A claim for deprivation of T&E must be fact-specific — it is viable only if a party can show that students are not being equipped for their “role[s] as citizen[s] and competitor[s] in the labor market.” Abbott II, 119 N.J. at 313 (citing Robinson I, 62 N.J. at 515). T&E is a “continually changing concept.” Id. at 303. It includes educational program standards, Abbott XX, 199 N.J. at

144, which the SFRA contemplates, N.J.S.A. 18A:7F-4.1 to -4.7, and which the Court has deemed as a reasonable expression of constitutionally sufficient T&E, Abbott XIX, 196 N.J. at 552-53.

So, to prevail on its T&E claims, JCBOE was required to establish significant educational deficiencies such that its students were not being equipped to enter society, and the record did not come close to making a prima facie showing that Jersey City students are being deprived of T&E. JCBOE did not, for instance, put forward an educational expert to opine that the quality of its education has declined. It offered no evidence that students do not have access to curricula or the NJSLS, that graduation rates have declined, that their performance on State assessments have dropped, or that dropout rates have increased. It offered no evidence that students did not have access to critical resources and educational opportunities.

In fact, the opposite is true. The District has seen significant improvement since the SFRA's enactment. Its graduation rate rose "over 10 points, to 77.2% for 2017, up from 67.3% in 2012[,]" and scores increased in both math and English language arts from 2015 to 2017. (Aa1136-37). Participation in advanced placement courses increased by 40% from 2012 to 2017. (Aa1136). In fact, on September 14, 2022, the State returned full local control to JCBOE because the District was determined to be high performing on the NJQSAC

continuum according to the comprehensive accountability office report, and because it showed gains in student achievement in the Department's transition report. (Ra31-39). As the trial court found, "[s]uch is not the stuff of a successful T & E claim." (Aa44).

Instead, JCBOE pointed to the removal of a single, third-grade reading program and undefined staffing issues in an attempt to establish its claim. (Ab21-22).¹⁹ But such "'[c]onclusory and self-serving assertions' in certifications without explanatory or supporting facts will not defeat a meritorious motion for summary judgment." Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 425-26 (App. Div. 2009) (quoting Puder v. Buechel, 183 N.J. 428, 440 (2005)); O'Loughlin v. Nat'l Cmty. Bank, 338 N.J. Super. 592, 606-07 (App. Div. 2001) (opposition to summary judgment must do more than establish abstract doubt regarding material facts). And such issues alone do not rise to the level of a constitutional deficiency. They speak more to the local "efficiency" choices JCBOE made about staffing and resource allocation than anything else. Abbott XX, 199 N.J. at 173. Its attempt to reduce what

¹⁹ JCBOE also argues that alleged deficiencies in the District's facilities should be considered. (Ab22-24). But those claims would necessarily be related to funding issues associated with the EFCFA, not the SFRA, and thus cannot be considered here because appellants are not pursuing their claims on count three of the Amended Complaint. (Ab3).

constitutes T&E to a mere mathematical formula in the SFRA should be rejected.

CONCLUSION

The trial court's order granting respondents' motion for summary judgment, and dismissing appellants' complaint with prejudice, should be affirmed.

Respectfully submitted,

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Dated: March 21, 2024

JERSEY CITY BOARD OF
EDUCATION and G.D., a minor, by his
guardian ad litem, NICOLE GOHDE,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY; NEW
JERSEY DEPARTMENT OF
EDUCATION; DR. ANGELICA
ALLEN-McMILLAN, in HER official
capacity as Acting 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 Schools
Development Authority,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-003642-22

CIVIL ACTION

ON APPEAL FROM
LAW DIVISION: MERCER COUNTY

DOCKET NO.: MER-L-914-19

Sat Below:

Hon. Robert Lougy, A.J.S.C.

PLAINTIFFS-APPELLANTS' REPLY BRIEF AND APPENDIX

Date Submitted: April 18, 2024

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PRELIMINARY STATEMENT¹

The Respondents’ Brief In Opposition to Appeal (“State’s Brief”) and the decision below share a central fallacy: the contention that the SFRA formula has been upheld as constitutional statewide and, therefore, Jersey City must prove a new T&E violation. In fact, the Supreme Court has never found that the State has remediated the severe and longstanding T&E violation in the Abbott litigation. Nor did the Court in Abbott v. Burke, 199 N.J. 140 (2009) (“Abbott XX”), relieve the State of its burden to show the SFRA remains constitutional when the Adequacy Budget – the core metric of the formula’s efficacy as a remedial measure for the T&E violation in Jersey City – has been significantly underfunded for over a decade.

Relying on a limited record, the trial court concluded that the SFRA is constitutional in Jersey City without evaluating or even considering the compelling evidence of the State’s failure to operate the SFRA formula under the “express, clear and exacting” mandates imposed by Abbott XX for SFRA’s “optimal” operation in future years. Correcting that error requires reversal of the decision below and a remand to develop a full evidential record to determine whether the State has allowed “deficiencies of a constitutional dimension” to “emerge” in SFRA’s operation requiring judicial branch remediation.

¹ All capitalized and abbreviated terms used herein have the same meaning as defined in Appellants’ initial brief submitted on November 20, 2023.

ARGUMENT

I. THE STATE’S BRIEF AND THE DECISION BELOW IGNORE THE STATE’S CONSTITUTIONAL BURDEN TO SHOW THE SFRA HAS BEEN OPERATING OPTIMALLY TO REMEDY THE ABBOTT VIOLATION IN JERSEY CITY

The erroneous decision below inevitably flowed from the trial court’s failure both to understand the substance of Jersey City’s claims and to adjudicate those claims under the correct legal framework. Adopting the State’s assertion that Jersey City’s Complaint amounts to little more than an attempt “to avoid paying its fair share” of school funding, (Db3, Db39),² the trial court granted the State summary judgment in large part because “it is constitutional for the State to expect JCBOE to contribute to its budget.” (Pa40.) However, Jersey City has never claimed that it is not required to contribute local revenue to the Adequacy Budget, nor does it challenge the determination in Abbott XX that the SFRA, if properly implemented, is capable of providing constitutionally adequate funding derived from both state aid and local property taxes. What Jersey City *does* challenge is the State’s inability to show, in the years since SFRA’s enactment, that it has operated the formula at its “optimal level” and that, as a result, has failed to carry out the protective measures

² Per Rule 2:6-8, references to the State’s Brief and Appendix are cited as “Db [page]” and “Da [page].” References to Jersey City’s initial brief and appendices and reply appendix are cited as “Pb [page]”, “Pa [page]” and “Pra [page].”

put in place by the Supreme Court to ensure the continued delivery of the resources and funding assured by the SFRA to remedy the Abbott T&E violation.

In Abbott XX, the Supreme Court conditioned SFRA’s constitutionality in Abbott districts on the State fully funding the formula in its first three years and thereafter reexamining the formula every three years to keep SFRA operating at its “optimal level.” Id. at 146 (declaring that SFRA’s “constitutionality is not a moment in time; it is a continuing obligation”). In the face of *prima facie* – and undisputed – evidence that the State, for over a decade, operated the SFRA at levels well below Jersey City’s Adequacy Budget, both the State’s Brief and decision below ignore Abbott XX’s pivotal holding of **conditional constitutionality**.³ The failure to evaluate Jersey City’s claims under the firm and explicit Abbott legal framework led to egregious errors in the decision below.

First, the trial court incorrectly held – as the State again argues in its Brief – that to challenge SFRA’s implementation, Jersey City must prove a T&E violation all over again, separate and distinct from the Abbott violation. (Db47-50; Pa43-44.) However, when the State sought the Supreme Court’s permission to implement the

³ It bears repeating that, contrary to the State and trial court’s interpretation, Abbott XX did **not** “affirm[] the constitutionality of SFRA” for all districts. (Db40; Pa39.) The Supreme Court’s constitutional review of SFRA was limited to Abbott districts. Abbott v. Burke, 196 N.J. 544, 551-52 (2008) (“Abbott XIX”); Abbott v. Burke, 206 N.J. 332, 350-51 (2011) (“Abbott XXI”).

SFRA, it neither asked for, nor was granted, relief from the obligation to remedy the Abbott T&E violation on the grounds that it had finally eliminated the extreme educational harms to Jersey City’s students. Abbott XX, 199 N.J. at 145; Abbott XXI, 206 N.J. at 354-55. Remarkably, the State’s Brief acknowledges that Jersey City “is one of the original Abbott districts.” (Db13; Pa9.) But the State refuses to acknowledge that, as an Abbott district, Jersey City students continue to suffer a deprivation of their right to T&E that places the burden on the State – not the District – to show the continued remediation of that deprivation through implementation of the SFRA under the conditions imposed by Abbott XX. See Abbott XXI, 206 N.J. at 357 (placing burden on State to demonstrate on remand impact of reduced funding on SFRA’s continuing constitutionality in Abbott districts).

The State’s Brief tries to sidestep the Abbott XX mandates altogether by invoking legislative “discretion,” the “Legislature’s prerogative,” and even “the concept of home rule” to justify the deferential review the trial court accorded Jersey City’s claim of SFRA underfunding. (Db37, 39.) However, deference is entirely inappropriate where, as here, Jersey City’s claim is grounded in the Abbott constitutional precedents. The trial court committed plain error when it ruled that Jersey City was obligated but “failed to provide sufficient facts to show that its students are not receiving T&E.” (Pa43.) Moreover, Stubaus v. Whitman, 339 N.J. Super. 38 (App. Div. 2001), relied on in the decision below (Pa43), rejected a

taxpayers' challenge to disparate tax rates for school funding in non-Abbott districts and provides no support for this contention.

Second, after allowing the State to extricate itself from the Abbott constitutional framework, the trial court compounded its legal error by accepting the State's argument that SFRA's Adequacy Budget is nothing more than a cost "estimate" used by the Department of Education to "determine each district's State aid." (Db35; Pa37.) In Abbott districts, the Adequacy Budget is much more than that: it is the "core" of the SFRA formula and represents the constitutionally-prescribed level of resources and funding necessary to remedy the T&E violation to their students. Abbott XIX, 196 N.J. at 552-58; Abbott XX, 199 N.J. at 153. Within the context of SFRA's cost-based, weighted student structure, "optimal" can only mean funding Jersey City at its Adequacy Budget level, a meaning the Supreme Court made clear in Abbott XXI when ordering full SFRA funding in Abbott districts in the wake of the State's \$402 million funding cut:

[t]he relief granted to the State [in Abbott XX] was thus conditioned on two express mandates. The first required that the SFRA be fully funded. The second mandate, requiring a 'look back' and retooling of the SFRA after its reexamination, underscored the first requirement of full funding. It was no small matter that our decision expressly took into account that SFRA's three-year period of implementation would be subject to rigorous review due to its requirement for reexamination, and adjustment, if necessary, to component parts of the formula.

Id., at 354 (emphasis added). In essence, the Supreme Court rejected the same argument the State makes in its Brief: that underfunding Jersey City’s Adequacy Budget is constitutionally permissible. And the Court did so because reduced levels of SFRA funding deprives students of the resources essential for a T&E education and to sustain progress towards remediating the Abbott constitutional violation:

Although in Abbott XX we could not say that the State had produced a formula that would guarantee students adequate funding to support a thorough and efficient education as measured by the CCCS, the State was allowed to effectuate SFRA’s formula with the expectation that that it could deliver to Abbott pupils all that the State assured.

Abbott XXI, 206 N.J. at 355 (emphasis added). Funding Jersey City significantly and consistently below its Adequacy Budget is, *a fortiori*, sub-optimal because it does not deliver “all” of the resources that the SFRA formula’s weighted cost structure has “assured.” It also represents a “retreat from the hard-won progress that our state had made toward guaranteeing the children in the Abbott districts the promise of educational opportunity.” Id. at 360. The Supreme Court simply “did not allow, and did not authorize, the State to replace the parity remedy with *some* version of SFRA or an underfunded version of the formula.” Id. at 341 (emphasis in original). Regrettably, the decision below does exactly that.

Finally, the State’s Brief and the decision below make reference to the SFRA’s periodic review (Db40-41; Pa39), but neither admit that the formula’s

reexamination is central to the State’s obligation to maintain SFRA’s constitutionality in Abbott districts. Abbott XX, 199 N.J. at 146. Under the Supreme Court’s “clear” and “exacting” instructions for carrying out the reexamination mandate, Abbott XXI, 206 N.J. at 360, the trial court should have analyzed – but did not – whether the State had fulfilled its obligation to (a) reexamine the formula’s “component parts” every three years; (b) conduct the reexaminations “based on a dissection of how the [SFRA] formula actually work[s] once implemented;” and (c) perform a retooling of the formula that is “meaningful and relevant for the Abbott districts so that SFRA continues to operate optimally and as intended in future years.” Id. at 354, 376. Both the State and the trial court treat SFRA’s reexamination as a policy matter left to the Legislature’s discretion rather than a recurring mandate to fulfill the State’s “continuing obligation” to keep the formula constitutional in Abbott districts. Abbott XX, 199 N.J. at 146; see also Abbott XXI, 206 N.J. at 341, 354 and 360 (explaining the “mandatory retooling” at “designated mileposts” are to prevent SFRA underfunding in future years).

When the Supreme Court “permitted the substitution” of its remedial funding orders “with the State’s alternative of SFRA funding, it did not alter the constitutional underpinnings” of the Abbott litigation. Abbott XXI, 206 N.J. at 360

(emphasis added).⁴ The decision below abandons those underpinnings, resting on a fundamental misapplication of the Court’s Abbott precedent. The trial court’s grant of summary judgment must be reversed.

II. THE UNDISPUTED EVIDENCE BELOW DEMONSTRATES THAT THE STATE, BY CONSISTENTLY AND SIGNIFICANTLY UNDERFUNDING THE SFRA, HAS FAILED TO SHOW THE SFRA REMAINS CONSTITUTIONAL IN JERSEY CITY.

When Jersey City’s claims are viewed within the proper constitutional framework, the trial court clearly erred by concluding that the SFRA is constitutional in Jersey City. The record evidence demonstrated that the SFRA was funded well below the District’s Adequacy Budget level after 2010. (See Pb13-15.) For the first decade of SFRA’s implementation, SFRA underfunding totaled a staggering \$730.2 million. (Pb15.) The record further showed that funding SFRA at reduced levels impaired Jersey City’s ability to provide the teachers, support staff and other essential resources built into the Adequacy Budget’s cost structure. (Pb21-24). See Abbott XXI, 206 N.J. at 358-60 (eliminating teachers, staff and other resources triggered by the State’s funding cut “had a significant impact” on Abbott students).

Neither the State’s Brief nor the trial court refutes this evidence. Rather, they both pin the blame for SFRA’s underfunding entirely – and erroneously – on what

⁴ In 2017, the Supreme Court summarily denied a motion by the State to vacate those underpinnings. Abbott v. Burke, Docket No. 078257 (Jan. 31, 2017) (Pra1).

the State asserts is Jersey City’s “refus[al]” to increase property taxes to allow it to fully fund its LFS. (Db39; Pa41.) This claim is, however, belied by the evidence showing that Jersey City consistently raised its property tax levy within the parameters allowed by the SFRA’s 2% annual tax growth cap. (Pa1947.) From 2008-09 to 2018-19, the local levy rose 44% from \$86 million to \$124 million. (Id.)⁵

The State also fails to acknowledge that, during that same timeframe, Jersey City’s LFS more than doubled, increasing from \$196.2 million to \$474 million, (Pa915, ¶ 33; Pa930, ¶ 154), even as the State’s share of the Adequacy Budget remained flat. (Pb14; Pa931, ¶ 160.) As a consequence, the gap between the District’s LFS and local levy dramatically grew during this period, from \$110 million in 2008-09 to \$337 million in 2019-20. (Pb15-16.) The capped increases in the local levy were vastly outpaced by an ever-growing LFS. (Pa915, ¶ 29.) Thus, Jersey City did not “refuse” to increase property taxes. The combination of the 2% cap and a climbing LFS each year made it impossible to raise the local contribution to a level anywhere near a fully funded Adequacy Budget. (Pa914, ¶¶ 23-24.)⁶

⁵ Jersey City’s Adequacy Budget also grew to \$622.8 million over the decade, an increase of nearly \$150 million, or 31%. (Pa913, ¶20; Pa931, ¶ 160.)

⁶ The “blame game” is also evident in the State’s complaint that the City “artificially” reduced the local tax base by granting tax abatements, entering into agreements for payments in lieu of taxes (PILOT), and not providing any of those payments to the District. (Db17.) Yet, the State admits that state law excludes distributing PILOT payments to school districts. (Db17; see also Da8, 22 and 24.) Thus, if there is any fault from excluding PILOT payments from school funding, “[t]he State should tend to its own house.” Abbott XXI, 206 N.J. at 367.

Moreover, the simplistic argument that Jersey City could tax its way out of year-to-year deficits in its Adequacy Budget stands in sharp contrast to the record evidence that several elements of SFRA's structure and operation not only caused this significant underfunding, but also lock-in that underfunding in future years. Most importantly, because the SFRA formula uses the LFS to determine state Equalization Aid, Jersey City experienced a 46% decline in the State's contribution to the Adequacy Budget, from \$277.5 million in 2008-09 to \$148.8 million in 2019-20. (Pa913, ¶¶ 20-22; Pa915, ¶ 32; Pa930, ¶153; see generally Pa915-Pa926.)⁷ As Equalization Aid dropped, Jersey City's reliance on transitional Adjustment Aid rose by 66%, from \$109 million in 2008-09 to \$181.9 million by 2019-20. (Pa915, ¶ 38 to Pa916, ¶ 44; Pa930, ¶ 152 to Pa931, ¶ 157.)⁸

While not contesting the evidence showing that SFRA's operation lies at the root of Jersey City's chronic funding deficits, the State does not address its own failure to examine those deficits at the four "designated mileposts" for the SFRA's reexamination beginning 2010. Nor does the State refute Jersey City's evidence that those reexaminations were neither "rigorous," "meaningful and relevant," nor

⁷ The State also froze the District's Educational Adequacy Aid (EAA) at \$125,000, the 2010 level, resulting in an additional loss of \$16.8 million in state aid each year to support its Adequacy Budget. (Pa1917-Pa1920.)

⁸ Adjustment Aid is not "hold harmless aid" (Db10), but rather "transition assistance" to enable districts like Jersey City with a budget below adequacy and with local levy gaps to maintain spending at the 2008-09 level without unrealistic tax increases. Abbott XX, 199 N.J. at 157.

resulted in any “retooling” to restore SFRA to its optimal level, as Abbott XX mandated and as Abbott XXI ordered. Abbott XXI, 206 N.J. at 376.

Instead, both the State and the trial court focus solely on the three amendments enacted by the Legislature in 2018, asserting they give Jersey City the “tools” to resolve any “problem” with SFRA’s implementation. (Db41; Pa42-43.) The record evidence shows, however, that these amendments -- which phase-out and eliminate Adjustment Aid by 2024-25, temporarily lift the 2% tax cap until 2024-25, and authorize, but do not require, Jersey City to enact an employer payroll tax to boost local revenue -- will not yield full SFRA funding in Jersey City within any specific timeframe and, even worse, will allow an underfunded Adequacy Budget to persist into the foreseeable future.

First, by eliminating Adjustment Aid, Jersey City will lose well over \$100 million each year through 2024-25, an estimated \$1 billion in total. (Pa1943; Pa1954.) Adjustment Aid is being phased out even as the State’s contribution of Equalization Aid to the Adequacy Budget continues to decline. By ending Adjustment Aid under the guise of “overfunding” (Db41), the amendments effectively lock-in SFRA underfunding at levels below Jersey City’s Adequacy Budget. Moreover, the State opted to eliminate Adjustment Aid even though, as the State itself admits, “the SFRA as originally enacted did not specifically provide for

a phase out of adjustment aid," (Pra4),⁹ and the SFRA conditionally approved by the Supreme Court included the Adjustment Aid safeguard. Abbott XX, 199 N.J. at 157.

Second, the amendments temporarily lifted the 2% cap on increases in the local tax levy in effect from 2010 to 2019. In response, Jersey City raised its local levy from \$124 million in 2018-19 to \$189 million in 2020-21, an increase of over 48%. (Pa1948.) Even with these sizable increases, Jersey City's local levy remained below its ever-rising LFS. In 2020-21, the local levy was more than \$332 million below the District's LFS while the Adequacy Budget remained underfunded by \$61.5 million. (Pa1944.) Further, the tax cap reprieve ends after 2024-25, at which point Jersey City reverts back to the 2% limit that constrained increasing the local contribution to the Adequacy Budget for nearly a decade. N.J.S.A. 18A:7F-38(a).

Lastly, the City responded to the amendments by imposing a local 1% employer payroll tax, Pa207-Pa218, to "offset the shock from cuts in adjustment aid to [Jersey] City's school district." Mack-Cali Realty Corp. v. State, 466 N.J. Super. 402, 426 (App. Div. 2021). The payroll tax generated \$30.7 million in 2019-20 and \$86 million in 2020-21. (Pa1996; Pa2007.) While helping to fund the Adequacy Budget, the payroll tax receipts are far below the amount Jersey City will lose annually in Adjustment Aid, not to mention the steady decline in Equalization Aid.

⁹ Pursuant to Rule 2:6-1(a)(2), Jersey City appends to this reply a portion of the State's summary judgment reply brief that is germane to the State's admission that the SFRA as enacted did not provide for a phase-out of Adjustment Aid.

The unrefuted evidence below demonstrates that the State's implementation of the SFRA in Jersey City, beginning in 2010, has baked-in funding deficits significantly below SFRA's optimal level. The formula generates consistent growth in the local revenue Jersey City is expected to contribute; funding gaps resulting from the District's inability to meet that ever-increasing expectation; and a continued decline in the State's contribution to the Adequacy Budget. The 2018 amendments do not confront this dynamic, let alone adjust or retool the formula to address it. For these reasons, this Court must reverse the summary judgment granted to the State below and find that Jersey City has made a facial showing that the State has failed to maintain the SFRA's continuing constitutionality.

III. SUPREME COURT PRECEDENT COMMANDS THAT THE MATTER BE REMANDED TO DETERMINE IF DEFICIENCIES OF A CONSTITUTIONAL DIMENSION HAVE EMERGED IN JERSEY CITY REQUIRING JUDICIAL REMEDIATION.

At a minimum, this Court should find that the trial court erred in entering summary judgment for the State given the numerous material issues of fact in dispute that preclude a finding of SFRA's constitutionality in Jersey City as a matter of law. Chief among those disputes are the State's bald contention that the SFRA is operating in Jersey City in the manner required by Abbott XX; that the 2018 amendments have worked as intended to allow the District to satisfy its LFS; and that Jersey City has the ability to increase property taxes to meet an ever-growing

LFS and fully fund its Adequacy Budget. The trial court was obligated to view the facts on the State’s motion for summary judgment in the light most favorable to the Plaintiffs and to draw all legitimate inferences from the facts in Plaintiffs’ favor. That clearly did not happen below. Globe Motor Co. v. Igdaley, 225 N.J. 469, 481 (2016) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

Additionally, the Supreme Court has made abundantly clear that when the State’s compliance with the Abbott remedial mandates is directly implicated, nothing less than the full “development of an evidential record” is required to properly adjudicate the constitutional rights of vulnerable students at stake. Abbott XIX, 196 N.J. at 565-66. Remand is especially necessary where, as here, the judicial branch must determine whether “deficiencies of a constitutional dimension” have “emerged” in Jersey City and, if so, the remediation that will redress the State’s breach. This is the precise procedural path ordered by the Supreme Court before it found, with the benefit of a full evidentiary record, that the State’s 2010 funding cut triggered constitutional deficiencies requiring restoration of full SFRA funding in Abbott districts. Abbott XXI, 206 N.J. at 356-57 (finding on remand the loss of essential resources from reduced SFRA funding in Abbott districts was not “*de minimus* or inconsequential” and not to be “greeted by this Court with indulgence”).

This Court took the very same approach to address the T&E violation recently found in Alcantara v. Allen-McMillen, 475 N.J. Super. 58 (App. Div. 2023). After

concluding Lakewood students were not receiving a T&E education and citing, inter alia, “key” record evidence that “over half” of the Lakewood district budget “went to transportation and special education for non-public school students,” id. at 63, this Court ordered a remand to determine if SFRA is operating optimally in that district, as mandated by Abbott XX:

...we reverse and remand with instructions for the agency to consider the substantive arguments pertaining to the SFRA in light of our Supreme Court’s directive in Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 146, 971 A.2d 989 (2009): the State has a continuing obligation to “keep SFRA operating at its optimal level ...” and “[t]here should be no doubt that we would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge.” Id. at 71.

That same result must obtain here.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the decision below and remand for a full hearing to adjudicate the SFRA’s continuing constitutionality in Jersey City.

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s/ Angelo J. Genova

ANGELO J. GENOVA

JENNIFER BOREK

Dated: April 18, 2024