

**PREPARED BY THE COURT**

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

Plaintiffs,

v.

STATE OF NEW JERSEY; NEW  
JERSEY DEP'T OF EDUCATION;  
DR. ANGELICA ALLEN-  
MCMILLAN, in her official capacity  
as Acting Commissioner of  
Education;<sup>1</sup> NEW JERSEY OFFICE  
OF MANAGEMENT AND  
BUDGET, NEW JERSEY DEP'T 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.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – MERCER COUNTY  
DOCKET NO. L-914-19

CIVIL ACTION

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING PLAINTFFS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

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<sup>1</sup> Party substitution per Rule 4:34-4.

**THIS MATTER** having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Motion for Summary Judgment filed by Defendants, State of New Jersey, et al., represented by Deputy Attorneys General Carolyn G. Labin, Laurie Fichera, and Amna Toor; and Cross-motion for Summary Judgment filed by Plaintiffs Jersey City Board of Education (“JCBOE”, “the District”), et al., represented by Angelo J. Genova, Esq., Jennifer Borek, Esq. and Nicholas J. Pellegrino, Esq.; and Defendants having filed a reply; and Plaintiffs, with leave of Court, having filed a sur-reply; and the Court having considered the parties’ pleadings and arguments; and for the reasons as stated below; and for good cause shown;

**IT IS** on this 14th day of June 2023 **ORDERED** that:

1. Defendants’ motion for summary judgment is **GRANTED**.
2. Plaintiffs’ cross-motion for summary judgment is **DENIED**.
3. This Order shall be deemed filed and served upon uploading on eCourts.

/s/ Robert Lougy  
ROBERT LOUGY, A.J.S.C.

  **X**        **OPPOSED**  
                **UNOPPOSED**

Jersey City Bd. of Educ., et al. v. State of New Jersey, et al.

June 14, 2023

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**PURSUANT TO RULES 1:6-2(f) AND 1:7-4(a), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

This matter comes before the Court on the parties’ respective applications for summary judgment. Plaintiffs are the Jersey City Board of Education and G.D., a minor, through his guardian ad litem, Nicole Gohde, a resident of Jersey City and a student attending a Jersey City public school operated by the JCBOE. Second Amended Complaint (“Compl.”) ¶¶ 8-9. Defendants are the State of New Jersey (“State”), New Jersey Department of Education (the “Department”), Angela Allen-McMillan, Ed.D., in her official capacity as Acting Commissioner of Education (“Commissioner”), New Jersey Department of Treasury, Elizabeth Maher Muoio in her official capacity as New Jersey State Treasurer, Office of Management and Budget (“OMB”), New Jersey Schools development Authority (“SDA”), and Manuel M. Da Silva in his official capacity as Interim CEO of the SDA. Compl. ¶¶ 10-17.

JCBOE and one individual Plaintiff bring this action claiming that the Thorough and Efficient Clause of the New Jersey State Constitution compels the State to make up for the shortfall in JCBOE’s contributions. *Id.* at ¶¶ 258-319. JCBOE further alleges a claim under the Educational Facilities Construction and Financing Act (“ECFCA”). *Id.* at ¶¶ 320-335. The undisputed facts show that JCBOE can contribute more to its students’ education. JCBOE has failed to

demonstrate that the SFRA and its amendments have negatively impacted its budget, nor does Jersey City have municipal overburden, and its equalized tax rate is below the State average. It is not overtaxed and has the capacity to increase its local tax levy. Lastly, the Court dismisses JCBOE's ECFCA claim. Accordingly, for the reasons as explained below, the Court grants Defendants' application for summary judgment and dismisses Plaintiffs' complaint with prejudice.

A more detailed overview of the SFRA, the EFCFA, and legal context follows. The Court details the relevant statutory framework in some detail. In January 2008, the Legislature enacted the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -70. Enactment of the SFRA followed decades of litigation over school funding. Abbott v. Burke ("Abbott XX"), 199 N.J. 140, 144 (2009). The statute is intended to fulfill the State Constitution's mandate that the Legislature provide for the maintenance and support of a thorough and efficient system of free public schools for children between the ages of five and eighteen years. Id. at 144, 147-48; N.J.S.A. 18A:7F-44; see also N.J. Const. art. VIII, § 4, ¶ 1 ("Thorough and Efficient Clause", "T&E clause"). The SFRA created a "clear, unitary, enforceable statutory formula to govern appropriations for education ...." N.J.S.A. 18A:7F-44(g).

The SFRA established a structure for public school funding through which school districts fund their budgets using a combination of local property taxes and State aid.<sup>2</sup> Ibid. The core of the formula 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. The adequacy budget is an estimate of what it costs each district to provide the “comprehensive curriculum standards” (CCCS) to each student according to the district’s enrollment and student characteristics. The adequacy budget is calculated on a per-pupil base cost that reflects the costs of educating an elementary school student with no special needs, with weighted adjustments to reflect the additional costs of educating middle school students, high school students, at-risk and limited English proficiency students, and students requiring special education. Abbott XX, 199 N.J. at 153. It is “perhaps best viewed simply in terms of identifying an overall level of funds which should be available to purchase personnel, resources, and programs as individual school or district leaders see fit.” Defendants’ Statement of Material Facts (“DSOMF”) ¶ 3 (citing Ex. 5, p i.); see Plaintiffs’ Response to Statement of Material Facts

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<sup>2</sup> The SFRA provides for several categories of State aid. See, e.g., N.J.S.A. 18A:7F-52, -54 to -58 (providing equalization, preschool, special education, security, transportation, and adjustment aid). “State aid” is a term that encompasses each of these categories.

(“PSOMF”) ¶ 3. That view “gives the flexibility to educators to decide how best to meet the specific needs of their students.” Id. at ¶ 4 (citing Ex. 5, p. i); PSOMF ¶ 4. The Department of Education (the “Department”) uses the adequacy budget in its formula for determining the amount of each district’s State aid. See N.J.S.A. 18A:7F-51 and -53.

A primary distinction between the SFRA and older school funding formulae is that “virtually all aid under the new formula is wealth-equalized.” Abbott v. Burke (“Abbott XIX”), 196 N.J. 544, 556 (2008). This means that while the SFRA allocates State aid to school districts, the statute “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.” Id. at 556-57.

This local portion, commonly known as the “local fair share” or “LFS,” is calculated by “indexing the district’s property wealth and aggregate income using statewide multipliers.” Id. at 557; see also N.J.S.A. 18A:7F-52(a). Each 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). This is the district’s minimum contribution to its annual budget.

Once the Department calculates the adequacy budget and LFS are calculated, it then determines the allocation of “equalization aid” for each district. Equalization aid is a category of State aid provided to districts for general fund expenses to support the district in meeting the cost of CCCS. N.J.S.A. 18A:7F-53. The Department calculates equalization aid by subtracting the district’s LFS from its adequacy budget, provided that equalization aid shall not be less than zero. Ibid. The SFRA’s formula reflects the legislative intent that wealthier municipalities will contribute proportionally more on a local level to their districts’ budgets than poorer municipalities, thus enabling the State to allocate school aid more equitably to needier districts. See N.J.S.A. 18A:7F-44(d).

In 2011, due to funding shortages, the Court revisited the SFRA. Abbott v. Burke (Abbott XXI), 206 N.J. 332, 370 (2011). Although the Court disapproved of the Legislature’s failure to fully fund the SFRA formula as to Abbott districts, it otherwise reaffirmed the constitutionality of the SFRA as to all other districts, even though the Legislature had not fully funded State aid for those districts due under the SFRA formula. Id. at 369-70.

In 2017, the Legislature took steps to address growing imbalances created by districts that were levying local property taxes well below their respective LFS. On July 24, 2018, the Legislature amended the SFRA with the passage of L. 2018,

c. 67 (“Chapter 67”), which amended the formula to calculate the required local share. Pursuant to Chapter 67, in school years 2019-2020 through 2024-2025, certain districts that receive decreased State aid because of changes in the required local share are required to increase their tax levy by two percent over the prior year. L. 2018, c. 67, § 2; N.J.S.A. 18A:7F-5(d). As a result, the legislation requires certain districts to contribute more to fund schools through their local levies. To make up for the anticipated reduction in State aid, Chapter 67 provided districts with new tools to raise revenue.

Chapter 67 was enacted shortly after the start of FY 2019 and the enactment of the Appropriations Act and a supplemental Appropriations Act for that FY. To address funding inequities in the short term and to transition to Chapter 67 funding, the Legislature included provisions in the FY 2019 Appropriations Act that modified the Governor’s budget message for FY 2019 with respect to State aid. See L. 2018, c. 53 (Appropriations Act) (Chapter 53); L. 2018, c. 54 (Supplementary Appropriations Act) (Chapter 54). In short, these acts provide that if a district’s prior year State aid was less than its uncapped aid, that district received an increase in State aid for FY 2019; and, if a district’s prior year State aid was more than its uncapped aid, that district saw a decrease in State aid for FY 2019. Chapter 67 follows a similar formula by defining a “[S]tate aid differential,”



which is a measure of the extent to which a district is overfunded and underfunded. The State aid differential is used to calculate gains and losses in State aid for the district.

Chapter 53 and 54 also require 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 . . . .” L. 2018, c. 53 and c. 54. More than a decade after SFRA’s enactment, the Legislature began phasing out the “transitional assistance” that it had provided in the form of adjustment aid. For FY 2019, the Commissioner distributed State aid in accordance with the mandates of Chapters 53, 54 and 67.

With this backdrop, the Court turns to the specifics of the Plaintiff District. The District was an original Abbott district. See Abbott v. Burke (Abbott I), 100 N.J. 269, 277 (1985); Compl. ¶ 25. In 2009 in Jersey City, the average residential property value was \$93,407 and the average total property tax bill was \$5,605. DSOMF ¶ 50; PSOMF ¶ 50. That year, its average school tax bill was \$1,525. Id. at ¶ 52 (citing Ex. 7, NJ#488, ¶ 18); PSOMF ¶ 52. By comparison, in the same year, the State average residential property value was \$290,502 and the average total property tax bill was \$7,281. Id. at ¶ 51; PSOMF ¶ 51. Also in 2009, the

State average school tax bill was \$3,869. Id. at ¶ 53 (citing Ex. 7, NJ#488, ¶ 18); PSOMF ¶ 53.

JCBOE's property values have increased, as compared to the State average. The average residential property value in Jersey City in 2021 was \$461,925 and the State average property value was \$335,623. Id. at ¶ 54; PSOMF ¶ 54. In that year, Jersey City's average total property tax bill per household was \$7,406, \$2,752 being the school levy; whereas the State average total property tax bill was \$9,284, \$4,908 being the school levy. Id. at ¶ 55; PSOMF ¶ 55. Also, Jersey City's equalized tax rate in 2021 was 1.402%, compared to the State average of 2.197%. Id. at ¶ 56; PSOMF ¶ 56.

From FY2009 to FY2023, JCBOE's previous year's tax levy was less than its LFS as calculated under the SFRA as demonstrated in the following chart. Id. at ¶¶ 33-47; PSOMF ¶¶ 33-47.

<b>Fiscal Year</b>	<b>LFS</b>	<b>Previous Year Tax Levy</b>	<b>Amount Over/Under LFS</b>	<b>Tax Levy as a % of LFS</b>
FY2009	\$196,262,527	\$82,809,873	-\$113,452,654	42.2%
FY2010	\$208,930,150	\$86,122,268	-\$122,807,882	41.2%
FY2011	\$221,140,368	\$93,012,049	-\$128,128,319	42.1%
FY2012	\$227,070,183	\$102,313,254	-\$124,756,929	45.1%
FY2013	\$223,671,965	\$104,359,519	-\$119,312,446	46.7%
FY2014	\$246,144,257	\$106,446,709	-\$139,697,548	43.2%
FY2015	\$311,145,670	\$108,336,848	-\$202,808,822	34.8%

FY2016	\$335,745,966	\$109,961,901	-\$225,784,065	32.8%
FY2017	\$314,634,364	\$112,161,139	-\$202,473,225	35.6%
FY2018	\$370,261,455	\$114,404,361	-\$255,857,094	30.9%
FY2019	\$398,895,043	\$116,692,448	-\$282,202,595	29.3%
FY2020	\$474,039,468	\$124,367,357	-\$349,672,111	26.2%
FY2021	\$522,089,435	\$136,504,704	-\$385,584,731	26.1%
FY2022	\$532,807,366	\$189,234,798	-\$343,572,568	35.5%

JCBOE proposed to increase its local tax levy to \$426,247,606 for FY23.

Id. ¶ 48; PSOMF ¶ 48.

Furthermore, Melvin Wynn, Plaintiffs' expert, did not claim that if Jersey City increased their tax rate to their LFS, it would result in municipal overburden.<sup>3</sup> Id. at ¶ 49 (citing Ex. 27, Jan. 19, 2022 Deposition of Melvin Wynn, 64:14-18); PSOMF ¶ 49.

Also, regarding uncapped aid, from FY2009 to FY2022, JCBOE has received more than the uncapped aid. DSOMF ¶¶ 18-31; PSOMF ¶¶ 18-31.

In July 2018, the State of New Jersey approved the payroll tax, L. 2018, c. 68, which permits municipalities with a population over 200,000 to impose an employer payroll tax and requires any municipality that has a median household income of \$55,000 or more to deposit those payroll tax revenues into a trust fund to be used solely for school purposes. Id. at ¶ 59; PSOMF ¶ 59. Jersey City applied a 1% employer payroll tax, effective on January 1, 2019. Pls.' Counterstatement of Material Facts ¶ 54 (citing Ex. J); Defendants' Response to PSOMF ¶ 54.

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<sup>3</sup> "Municipal overburden is 'a condition in many poorer districts where the cost of local government--police, firefighters, other municipal employees, road maintenance, garbage collection, etc.--is so high that the municipality and the school district are reluctant to increase taxes for *any* purpose, including education.'" Abbott XX, 199 N.J. at 181 n.3 (quoting Abbott v. Burke ("Abbott II"), 119 N.J. 287, 325 (1990)).

“[T]he Mayor of Jersey City acknowledged the Jersey City payroll tax would generate ‘sufficient revenue to supplant the Adjustment Aid JCBOE would lose for the 2019- 2020 school year’ and the cost saving steps by JCBOE would ensure that the loss of Adjustment Aid will not have a marked negative effect on educational instruction.” DSOMF at ¶ 61; PSOMF ¶ 61. Jersey City has made payments to JCBOE of \$3,500,000 in FY2019 from the payroll tax; \$30,692,633 in FY2020; \$86,010,956.00 in both FY2021 and FY2022; and JCBOE projects to receive \$65,000,000 in FY2023. *Id.* at ¶¶ 64-68; PSOMF ¶ 64-68.

Plaintiff’s expert, Melvin L Wyns, stated the following. Mr. Wyn asserts that:

JCBOE has received funding at its Adequacy Budget level only in the first year SFRA was implemented and, therefore, JCBOE public schools have been funded at a level below that which is necessary to provide a thorough and efficient education in all other years. Moreover, the recent amendments to SFRA will further reduce JCBOE’s state aid and especially its Adjustment Aid.

[Certif. of Melvin L. Wyns, at ¶ 15 (“Wyns Cert.”).]

He opines that due to the increasing Adequacy Budget, decreasing Equalization Aid, the Adjustment Aid cap, and the local levy cap, JCBOE is below adequacy and the constitutional level of funding for T&E. *Id.* at ¶ 24. He also explains that Adjustment Aid increases when there is a local levy gap, but SFRA’s two percent

property tax cap, which was recently eliminated, has hampered JCBOE's ability to quickly increase its local revenue. Id. at ¶¶ 25-26. The local levy gap increased by over 206% from the 2008-09 and 2019-20 school years. Id. at ¶ 29. Also, the SFRA Amendments will cause Jersey City to continue to fall below adequacy and deprive students of T&E. Id. at ¶¶ 147, 149, 174. Furthermore, "[a]s a result of the 13 percent reduction in Adjustment Aid for the 2019-20 school year, which is a reduction in funding from the 2018-19 school year of \$27,192,633 and of \$38,147,490 from the version of SFRA which was held to be constitutional in Abbott XX, JCBOE will be forced to take drastic steps to balance the budget which will directly affect JCBOE's ability to comply with CCCS." Id. at ¶ 150. JCBOE would have to increase its local levy by 114% of its 2019-20 level for it to fund "at the level required by the Adequacy Budget." Id. at ¶ 161. SFRA's 2% cap has made it impossible for JCBOE to fund its LFS in order "to reach adequacy." Id. at ¶ 162. Mr. Wyns asserts that, according to Abbott XX, "Adjustment Aid was intended to allow districts to incrementally increase their local levy to the LFS level while still providing funding necessary to provide a thorough and efficient education to K-12 students." Id. at ¶ 173. Finally, Mr. Wyns analyzed, through various different scenarios, if the payroll tax would be sufficient to replace

Adjustment Aid and he concluded that a yearly payroll tax revenue of \$80 million was insufficient. Id. at ¶¶ 177-178, 180-185.

On September 1, 2020, Plaintiffs filed a second amended complaint. Count I of the Complaint alleges that the SFRA is unconstitutional as applied. Specifically, Plaintiffs allege “[w]hile the State can meet its constitutional obligation of providing a thorough and efficient education to the students of New Jersey by delegating some of that obligation to local school districts, if any shortfalls exist in funding necessary to provide a thorough and efficient education, the obligation falls on the State to ensure sufficient funding.” Compl. ¶ 266 (citing Robinson v. Cahill (“Robinson I”), 69 N.J. 133, 142 (1975)). Furthermore, “[s]ince 2009, ... JCBOE school funding has never matched its Adequacy Budget, meaning that since 2009, JCBOE has not received sufficient funding for the resources necessary to provide a thorough and efficient education.” Id. at ¶ 267 (citing Wyns Cert., ¶ 15). Also, “JCBOE... continues to fall further below adequacy.” Id. at ¶ 271 (citing Wyns Cert., ¶ 158).

Count II challenges the SFRA Amendments. Plaintiffs allege that “[t]o provide the funding necessary for a thorough and efficient education, school funding must be at the level set forth by the Adequacy Budget.” Id. at ¶¶ 294, 317.

Furthermore, the State’s two late Educational Adequacy Reports, and a third still not produced irrespective of its past deadline, are incomplete because they did not address JCBOE’s ability to meet the LFS. Id. at ¶ 301 (citing Wyns Cert., ¶¶ 17-19). Plaintiffs allege that “[t]he conditions highlighted by the Court in Abbott XX for the continuance of Adjustment Aid, specifically that districts be afforded time to incrementally raise their local tax levy to the LFS level to avoid significant tax levy increases, do not yet exist in JCBOE as Jersey City would have to increase its property tax rate by 33% based upon 2018 Equalized Property values.” Id. at ¶ 305 (citing Wyns Cert., ¶ 162). Plaintiffs further allege that the Legislature’s decision to amend the SFRA to phase out adjustment aid will cause JCBOE to continue to fall below adequacy. Id. at ¶¶ 306-07, 317. Also, “the payroll tax revenue will not be sufficient to cover the reduction and ultimate elimination of Adjustment Aid.” Id. at ¶ 316 (citing Wyns Cert., Ex. Z).

Count III alleges that EFCFA as applied violates the State’s obligation to provide T&E. Id. at ¶¶ 322, 325, 327-331, 334-335.

JCBOE seeks the following. JCBOE seeks an order declaring that Defendants have failed to meet their statutory and constitutional obligations. JCBOE also seeks preliminary and permanent injunctions enjoining the State from providing State aid in amounts below what it argues is required by the SFRA and



enjoining the State from further reducing funding to JCBOE and ordering JCBOE to provide funding to JDCBOE to fund its schools at the adequacy budget level. JCBOE also seeks a permanent injunction prohibiting the State from implementing the aid reduction of N.J.S.A. 18A:7F-68(b).

Defendants argue the following in support of their motion for summary judgment. First, Defendants argue that the SFRA and the amendments are constitutional as applied.<sup>4</sup> Defs.' Br. 42. Defendants explain that the Court affirmed the SFRA's constitutionality in Abbott XX and, since then, the Legislature has refined the SFRA formula to satisfy the school funding obligations, as shown with Chapters 53 and 67, which are presumptively constitutional. Id. at 43. (citing L. 2018, c. 53; L. 2018 c. 54; L. 2018, c. 67; Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 285 (1998)). Defendants further argue that a claim that the Defendants are not satisfying the T&E Clause must be factually specific and

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<sup>4</sup> Furthermore, the Amended Complaint includes the New Jersey Office of Management and Budget, the New Jersey Department of the Treasury, and the State Treasurer as Defendants. Defendants argue that the Court should grant summary judgement as to those defendants because the Amended Complaint does not bring forward any specific causes of action against them and the record does not discuss them. Id. at 42, n.16 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541-42 (1995)).

must state significant educational deficiencies. Id. at 43-44 (citing Stubaus v. Whitman, 339 N.J. Super. 38, 56 (App. Div. 2001)).

Defendants assert that T&E is a “continually changing concept” that refers to “the educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.” Id. at 44 (quoting Abbott II, 119 N.J. at 303 (citing Robinson I, 62 N.J. at 515). The record does not suggest that the District is not meeting this standard; rather, the District has significantly improved since the Legislature enacted the SFRA. Id. at 44-45. Defendants explain that “[d]ue to these achievements in student performance, the Department ended its intervention in the ‘instruction and program’ area and implemented a plan to return JCBOE to full local control.” Id. at 45 (citing Ex. 1, NJ#119-20). Further, Plaintiff cannot reduce the T&E standard to a mathematical formula in the SFRA. Ibid.

Defendants assert that funding below the adequacy budget does not show a T&E violation. Ibid. Defendants explain that the State is not required to be financially responsible for a district that fails to meet its local contribution. Ibid. Defendants assert that “the SFRA is a 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.” Id. at 46. The Legislature is

required to provide a through and efficient public education system, however the State can require local contribution if the local districts have the tools to do so.

Ibid. (citing N.J. Const. art. VIII, § 4, ¶ 1; Robinson I, 69 N.J. at 142).

Defendants then explain the SFRA. Ibid. First, DOE determines the district's adequacy budget, which refers to the estimated cost of the CCCS based on the district's enrollment and student characteristics. Ibid. Defendants assert that "it is not an approved school district budget" nor a required level of State funding. Id. at 46-47 (citing N.J.S.A. 18A:7F-51; N.J.S.A. 18A:7F-5(c)). Rather, the Department uses the calculated adequacy budget to determine State aid for the districts. Id. at 47 (citing N.J.S.A. 18A:7F-51 and -53).

A district's LFS must also be determined before State aid is established. Ibid. (citing Abbott XIX, 196 N.J. at 557; N.J.S.A. 18A:7F-52(a)). The LFS calculation considers a district's "ability to raise local revenue," which is established by "indexing the district's property wealth and aggregate income using statewide multipliers." Ibid. (citing Abbott XIX, 196 N.J. at 557; N.J.S.A. 18A:7F-52(a)). The Department recalculates LFS annually. Ibid. (citing N.J.S.A. 18A:7F-52(c)). Defendants argue that it is inherent to the SFRA that a district can meet its LFS. Ibid. State aid, or equalization aid, is the balance of the adequacy budget minus the LFS. Ibid. (citing N.J.S.A. 18A:7F-53). There might also other

factors that the LFS calculation does not address that could prevent a district from raising its LFS immediately. Id. at 47-48. SFRA allows for protective measures to help districts. Id. at 48 (citing Abbott XX, 199 N.J. at 165). While districts are required to contribute to their LFS, “SFRA’s floor for a district’s contribution is the lesser of its LFS or the prior year’s tax levy.” Id. at 48 (citing N.J.S.A. 18A:7F-5 (b)). In Abbott XX, the Court stated that “the State expects that eventually every district will be able to contribute their LFS.” Ibid. (citing 199 N.J. at 165).

Defendants explain that “JCBOE’s real objection is that the Legislature is compelling it to do its part”; however, that is the Legislature’s prerogative, and the Supreme Court deemed that responsibility to be constitutional in Abbott XX. Ibid. JCBOE does not dispute its LFS calculation or its increased wealth. Ibid.

Defendants explain that Jersey City’s LFS increased due to city’s increase in wealth, which is consistent with SFRA. Id. at 49. Defendants further explain that “nothing in the SFRA or the T&E clause suggests that the State needs to subsidize a district’s local share when a district refuses to do so,” as that would permit districts to flout their SFRA obligations. Id. at 49-50. Defendants note that the plain language of SFRA recognized that districts can satisfy the T&E Clause without meeting their LFS. Id. at 50. Districts are only required to raise their

“required local share,” which is “the lesser of the LFS or the prior year’s levy.”

Ibid. (citing N.J.S.A. 18A:7F-5(b); Abbott XX, 199 N.J. at 165).

Defendants argue that JCBOE erroneously asserts that the adequacy budget is a required local annual budget and if not met, the T&E Clause is not satisfied.

Ibid. (citing Pl. Am. Compl. ¶¶ 2, 258-292). Abbott XX and Abbott XXI do not compel the State to make sure that districts function at the adequacy budget. Ibid.

Furthermore, JCBOE’s argument diminishes districts’ ability to determine how they can meet the T&E Clause. Ibid. Defendants further note that other districts spend below or above adequacy and provide T&E. Id. at 51 (citing SOMF ¶ 12).

Defendants also note that “JCBOE has consistently received more State aid than its SFRA calculated aid,” partly because of a hold harmless provision. Id. at 51-52.

Furthermore, “JCBOE actually received more aid than it would have received under the SFRA formula.” Id. at 51-52.

Defendants state that it is undisputed that JCBOE can contribute its fair share. Id. at 52. Additionally, Defendants argue that any assertion that JCBOE cannot satisfy the T&E Clause is meritless. Ibid.

Next, Defendants reject Plaintiffs’ argument that the SFRA Amendments are unconstitutional as applied. Ibid. JCBOE can raise its LFS, and the payroll tax has worked as anticipated. Ibid. Furthermore, municipal overburden is not an issue in

Jersey City, as demonstrated in the undisputed material facts. Id. at 52-53.

Defendants further state that SFRA is periodically recalculated, like here. Id. at 53 (citing Abbott XX, 199 N.J. at 174; Senate Select Comm., School Funding Fairness Notice (Feb. 14, 2017)). Defendants note that “[t]he SFRA amendments followed almost two years of legislative analysis and consideration of funding inequities.” Ibid. (citing Senate Select Comm., School Funding Fairness Notice (Feb. 14, 2017)).

Defendants point out that property values and income levels in Jersey City have increased in the past decade. Id. at 55. The average property values exceeded the State average. Ibid. Also, as of 2019, there is only a minimal difference between the State average income and Jersey City’s average income. Ibid. Its LFS increased as a result. Ibid.

Additionally, while student enrollment has nearly stayed the same, JCBOE passed significantly greater budgets over the previous few years. Ibid. Defendants explain that “despite JCBOE’s complaints about its lack of funds, its budgets have increased to amounts that were significantly more than the adequacy budget under the SFRA, and JCBOE has the ability to fund those budgets.” Id. at 56. Further, “Chapter 67 recognized that certain districts were overfunded under the SFRA and could contribute more toward their budgets.” Ibid. The Legislature is just

recognizing the changes taking place in districts such as Jersey City and their ability to pay for students' education. Ibid.

Next, Defendants explain the payroll tax, Chapter 68, and argues that it does not violate the T&E Clause. Id. at 56-58, n.18 (citing L. 2018, c. 68, ¶ 1; Mack-Cali Realty Corp. v. State, 466 N.J Super. 402, 426-27 (App. Div. 2021), aff'd o.b., 250 N.J. 550 (2022)). Defendants argue that "Chapter 68 is ... specifically tailored to assist JCBOE in its efforts to raise its LFS as its adjustment aid is gradually reduced." Id. at 57. Furthermore, "it has assisted JCBOE while it raised its local tax levy." Ibid. Defendants argue that the undisputed facts show that JCBOE's payroll tax funds more than made up for the yearly loss in state aid. Id. at 58. In addition, its increase in tax levy with the payroll tax provided JCBOE with more than enough funding to counterbalance its decreased adjustment aid. Ibid.

Next, Defendants argue that the undisputed facts show, and JCBOE's expert even found, that as of January 19, 2022, that there is no municipal overburden. Id. at 59 (citing SOMF ¶ 49). Defendants state that Jersey City's tax rate is less than the State average. Ibid. Also, JCBOE is able to raise its local tax levy. Ibid.

Second, Defendants argue that Plaintiffs cannot demonstrate that the State has not satisfied its Educational Facilities Construction and Financing Act obligations. Id. at 60. Additionally, Defendants note that JCBOE's claim

regarding more funding for the school facilities program is part of pending litigation in the New Jersey Supreme Court in Abbott v. Burke. Id. at 60-61. As such, “[b]ecause the minor plaintiff is also a member of the Abbott class of plaintiffs in the Supreme Court matter, this court should dismiss JCBOE’s EFCFA claim.” Id. at 61. In the alternative, Defendants argue that the Commissioner should address this matter. Id. at 61 n.22 (citing Abbott v. Burke (“Abbott V”), 153 N.J. 480, 524 (1998)). However, Defendants still assert that JCBOE’s EFCFA claim is still unsuccessful. Ibid.

Defendants argue that “[t]his claim completely disregards the statutory sequencing process that has been established to rank and prioritize school facilities projects in SDA districts .” Ibid. (citing N.J.S.A. 18A: 7G-5 (m) (2)). Defendants further explain that just because the LRFP was approved, does not mean that an individual school facilities project will be approved. Id. at 62.

In opposition to Defendants’ motion for summary judgment and in support of their own, Plaintiffs argue the following. First, Plaintiffs argue that meeting the Adequacy Budget is essential for districts to provide their students with a thorough and efficient education. Pl.’s Br. in Opp. 25. Plaintiffs argue that Defendants’ failure to ensure JCBOE is funded at the Adequacy Budget level has prevented JCBOE from providing a thorough and efficient education, which renders SFRA



unconstitutional as applied. Ibid. Plaintiffs argue that the solution is for Defendants to provide the funding necessary for JCBOE to reach its Adequacy Budget. Ibid.

Plaintiffs argue that funding at the Adequacy Budget level is necessary for a thorough and efficient education. Id. at 26. Plaintiffs argue that Defendants incorrectly argue that the Adequacy Budget is an estimate of what it costs to meet T&E, and only used to determine the amount of State aid each district receives. Id. at 27-28 (citing Def.'s Br. 8, 46, 47). Plaintiffs argue that this interpretation renders the SFRA no different than previous school funding statutes that were found unconstitutional due to an insufficient link between the requirements of the CCCS and the funding assured by the school funding formula. Id. at 29.

Plaintiffs argue that Defendants' attempt to blame JCBOE for funding failures is disingenuous and deceptive and mischaracterizes the parameters of the SFRA. Id. at 29. Plaintiffs argue that the Legislature prohibited the District from raising their property tax to meet their LFS. Id. at 29-30. Plaintiffs argue that Defendants are responsible for supplementing the funding for districts that cannot raise their LFS to the amount required, but they have only received sufficient funding twice in the past decade. Id. at 31 (citing Abbott XX, 199 N.J. at 165). Plaintiffs argue that while the tax cap has been removed, Plaintiffs cannot tax their

way out of the local levy gap, nor should they be expected to raise taxes in a short period of time to meet the LFS. Id. at 31-32 (citing Abbott XX; N.J.S.A. 18A:7F-5(d)). “What JCBOE was required to contribute towards the Adequacy Budget prior to the recent amendments to SFRA was the lesser of its LFS or the ‘required local share,’ which is the local share raised in the previous year.” Id. at 32.

Further, Plaintiffs argue that DOE has not conducted a study to determine whether the JCBOE can raise its LFS, and without such a determination, Plaintiffs argue that “the protective mechanisms put in place in SFRA and reinforced by the Court in Abbott XX are lacking” and therefore demonstrate Defendants’ unconstitutional application of SFRA. Id. at 32.

Plaintiffs assert that the payroll tax has not made up for the loss in JCBOE’s funding. Id. at 33. Plaintiffs maintain that local levy increases and the implementation of a payroll tax are unpredictable and often unable to compensate Plaintiffs for the loss of state aid. Ibid. Plaintiffs argue that the local levy was never designed to increase at the rate Defendants demand. Id. at 33-34. Plaintiffs argue that the payroll tax was designed to completely offset Plaintiffs’ loss of state aid, but it has not. Id. at 34. Further, Plaintiffs argue that the payroll tax is an improper school funding mechanism because it is indefinite and unpredictable. Ibid. Plaintiffs argue it is indefinite because the City adopted it via a local

ordinance, and thus could be repealed at any moment. Id. at 34-35. It is unpredictable because it is tied to the economy. Id. at 35.

Plaintiffs argue that they are entitled to summary judgment because Defendants have failed to prove that Plaintiffs are providing T&E under its current funding level. Id. at 36. Plaintiffs argue the burden is placed on Defendants to demonstrate that “(i) JCBOE has not been precluded from being able to provide its students with a thorough and efficient education by its having been funded significantly below the Adequacy Budget level for years; and (ii) JCBOE will not be precluded in the future from being able to provide its students with a thorough and efficient education by the millions of dollars in lost loss of Adjustment Aid.” Id. at 36.

Plaintiffs argue that Defendants submit that JCBOE is closing the achievement gap. Id. at 37 (citing Defs.’ Br. 22). However, Plaintiffs argue that this does not demonstrate that Jersey City’s students are receiving a thorough and efficient education and more is needed so they can provide its students with the education they deserve. Id. at 37. Plaintiffs argue that Defendants fail to establish the rationale for the amendments. Id. at 37. Plaintiffs argue that the Supreme Court instructed the State to retool the SFRA if necessary, yet Defendants’ brief does not analyze whether the SFRA and its amendments are operating optimally.

Id. at 37. Plaintiffs argue they have demonstrated the effects of underfunding. Id. at 37. For example, JCBOE had to cut some after school programming, had to reduce the number of support staff, has suffered teacher shortages, and its students endure overcrowding in classrooms, poor building conditions, and poor ventilation. Id. at 37-39. Plaintiffs assert that COVID-19 related spending increased the District's budget. Id. at 39.

Plaintiffs argue that due to the State's consistent underfunding of JCBOE, the State's application of SFRA is unconstitutional. Id. at 40.

Second, Plaintiffs argue that Defendant SDA has failed to fully fund facilities development. Id. at 40. Plaintiffs assert that JCBOE houses most of its students in old, unsafe, and overcrowded schools and that JCBOE requires several major new facilities projects to address their students' needs. Id. at 42-43.

Plaintiffs argue that JCBOE needs intervention to reopen school buildings to prevent concerns raised by COVID-19. Id. at 43. Plaintiffs argue that Defendants have failed to "fund the complete cost of remediating the infrastructure and life cycle deficiencies that have been identified in [JCBOE] ... [and that the SDA's behavior does] not comport with the State's constitutional mandate to provide facilities adequate to ensure a thorough and efficient education." Id. at 44 (citing Abbott V, 153 N.J. at 524).

Defendants argue the following in reply for its motion for summary judgment and in opposition to Plaintiff's cross-motion for summary judgment. Defendants argue that JCBOE misunderstands the adequacy budget as it does not establish a constitutionally mandated level of funding. Defs.' Reply Br. 2-3. The adequacy budget was in fact "designed to provide sufficient resources and at the same time to incentivize fiscal efficiency." Id. at 3 (quoting Abbott XX, 199 N.J. at 173). Furthermore, "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." Ibid. Defendants argue that because the adequacy budget does not equate to costs of T&E, it follows that it is not necessary for districts to meet their LFS. Id. at 4. Furthermore, the State is not required to provide funds to ensure that the district is spending its exact adequacy budget. Id. at 5.

Defendants also argue that JCBOE misinterprets the purpose of adjustment aid. Ibid. Defendants explain that "while it is true that the SFRA as originally enacted did not specifically provide for a phase out of adjustment aid, that fact is not dispositive." Id. at 6. Rather, "adjustment aid was a temporary measure for 'those districts that are unable to raise their LFS in future years.'" Ibid. (citing Abbott XX, 199 N.J. at 166). All districts will have the ability to contribute their

LFS but are not required to do so overnight. Ibid. (citing Abbott XX, 199 N.J. at 166). Moreover, Plaintiff does not dispute that its income and property wealth have dramatically increased compared to other districts. Ibid. (citing DSOMF ¶¶ 33-58), (Pb12)). Plaintiffs also do not dispute that it “radically under-taxed compared to its LFS” between FY2012 and FY2018, which is partly due to tax levy caps. Id. at 7 (citing Defs.’ SOMF ¶¶ 34-42; Pls.’ Response to Defs.’ SOMF, ¶¶ 34- 42). Defendants state that “as JCBOE’s ability to contribute locally increased, its actual contribution did not rise proportionally because JCBOE instead relied on the adjustment aid from the State rather than increasing its contribution to its LFS,” which is inconsistent with the purpose of SFRA. Ibid. (citing N.J.S.A. 18A:7F-44(d); Abbott XX, 199 N.J. at 152, 155).

Defendants next rejects JCBOE’s as-applied constitutional challenge to Chapter 67 and JCBOE’s undue burden argument. Id. at 7, 10. Defendants assert that “the State did not expect JCBOE to reach its LFS ‘overnight,’ if at all”; rather, the State “provided a six-year period for the gradual elimination of adjustment aid, FY2020 to FY2025.” Id. at 10. There was also another year because of Chapters 67 and 68. Ibid. n.7 (citing L. 2018, c. 67; L. 2018, c. 68). The payroll tax was also an option, which has helped. Id. at 10-11. Defendants assert that “the record

does not support JCBOE's asserted decrease in payroll tax collections." Id. at 12 (citing (Pb16-17); (Defendants' SOMF, Ex. 26, NJ#001115); Pb16-17).

Furthermore, Defendants assert that the facts do not support JCBOE's argument that the "levy gap" is growing. Ibid. JCBOE has shown that it can contribute its LFS. Ibid. Furthermore, Plaintiffs advance no evidence of municipal overburden; in fact, their expert concluded to the contrary. Ibid. Even so, the SFRA amendments provide protections against it. Ibid. (citing N.J.S.A. 18A:7F-68(c)).

Next, Defendants argue that "JCBOE has failed to provide sufficient facts to show that its students are not receiving T&E." Id. at 13 (citing Abbott II, 119 N.J. at 313; Stubaus v. Whitman, 339 N.J. Super. 38, 56 (App. Div. 2001)). Defendants note that "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." Ibid. (citing Final Qualitative Report; Department of Education, Transition Plan for the Return of Local Control to Jersey City Public Schools (Sept. 2022)). Furthermore, Defendants argue that JCBOE is relying on conclusory claims to support its claim that the T&E Clause is not met, which is

insufficient. Id. at 13-14 (citing Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 425-26 (App. Div. 2009); O’Loughlin v. Nat’l Cmty. Bank, 338 N.J. Super. 592, 606-07 (App. Div. 2001)).

Finally, Defendants repeat their arguments as to Plaintiffs claims regarding the EFCFA. Id. at 14-15.

In reply to Defendants’ motion for summary judgment and in support of Plaintiffs’ cross-motion for summary judgment, Plaintiffs argue that there are two problems with the State’s argument that the Payroll Tax is serving its purpose of helping JCBOE while JCBOE “gradually” increases its local levy. Pl.’s Sur-Reply 2 (citing Def.’s Br. 11). First, Plaintiffs argue that JCBOE’s tax levy increases have not been “gradual” and therefore it violates the Supreme Court’s instructions in Abbott XX, that school districts must not be compelled to increase their levy overnight. Id. at 2.

Second, Plaintiffs argue that Payroll Tax was to make up for all lost Adjustment Aid, id. at 2-3 (citing N.J.S.A. 40:48C-15(d)(2)), and that it has failed to do so. Id. at 3-4. Further, the Payroll Tax is unpredictable, which runs counter to the Supreme Court’s facial constitutional holding of the SFRA. Id. at 4 (citing Abbott XX, 199 N.J. at 173 (concluding that “under [the] SFRA’s funding scheme, all districts will benefit from the formula’s insistence on predictability and



transparency in budgeting”) (emphasis added); Abbott XXI, 206 N.J. at 352 (stating that the SFRA devises a “permanent formula to perennially provide school districts with predictable amounts of sufficient resources that should permit” school districts to meet the core curriculum standards); see also Abbott II, 119 N.J. at 385 (holding the State must “assure that poorer urban districts’ educational funding is substantially equal to that of property-rich districts. ‘Assure’ means that such funding cannot depend on the budgeting and taxing decisions of local school boards. Funding must be certain, every year.”)).

The Court now turns to the relevant law. The parties both move for summary judgment. The procedures and standards for summary judgment are well-established. Summary judgment shall be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. R. 4:46-2(c). Furthermore, “[a]n 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. Summary judgment is appropriate where the party opposing summary judgment points only to disputed issues of fact that are “of an insubstantial nature.” Brill, 142 N.J. at 529. Where the evidence on a factual issue “is so one-sided that one party must

prevail as a matter of law,” the court “should not hesitate” to grant summary judgment. Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 252 (1986)). A genuine issue of material fact must be a disputed issue of fact that is of a substantial nature, having substance and real existence. Brill, 142 N.J. at 523. Bare conclusions without factual support cannot defeat summary judgment; instead, evidence submitted in support of the motion must be admissible, competent, non-hearsay evidence. Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999); Jeter v. Stevenson, 284 N.J. Super. 229, 233 (App. Div. 1995).

As the Court explained in Friedman v. Martinez, “a key aim ‘of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.’” 242 N.J. 450, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)). “Summary judgment should be granted, in particular, ‘after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’” Ibid. (quoting Celotex Corp., 477 U.S. at 322).

The moving party must sustain the burden of showing clearly that no genuine issue of material fact is present in the case and that the moving party is

entitled to judgment as a matter of law. Judson v. Peoples Bank & Tr. Co., 17 N.J. 67, 73 (1954) (Brennan, J.). In determining whether a dispute is genuine, the court makes all legitimate inferences in favor of the non-moving party and denies the motion if there is the slightest doubt about the existence of a material issue of fact. Saldana v. DiMedio, 275 N.J. Super. 488 (App. Div. 1998). The court must “consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party in consideration of applicable evidentiary standards, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party.” Brill, 142 N.J. at 523. The court must evaluate “whether evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533 (quoting Anderson, 477 U.S. at 251-52). Summary judgment may be rendered on any issue in an action although there is a genuine factual dispute as to any other issue. R. 4:46-2(c). Furthermore, “the act of filing the cross-motion [for summary judgment] represents to the court the ripeness of the party’s right to prevail as a matter of law.” Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 178 (App. Div. 2008).

Here, all parties move for summary judgment. No party asserts any dispute of material facts. Only legal issues remain.

Count I of the Complaint alleges that JCBOE has a right to receive State funding that “at a minimum, equals the Adequacy Budget;” alleges that the State “replaced” the SFRA with an underfunded version of the statute and claims that failure to fund at the “statutory Adequacy Budget level” violates the Constitution. Pl.’s Compl. ¶¶ 263, 269-77. Plaintiff alleges that the State has failed to provide JCBOE with extraordinary aid, which caused it to fall “below adequacy” in violation of the Constitution. Id. at ¶¶ 278-85.

Count II of the complaint asserts that JCBOE has a right to receive State funding “at the level set forth by the Adequacy Budget.” Id. at ¶¶ 294, 317. Plaintiff alleges that the Legislature’s decision to amend the SFRA to phase out adjustment aid is unconstitutional because it will result in municipal overburden. Id. at ¶¶ 296-305.

Count III alleges that EFCFA as applied violates the State’s obligation to provide T&E because it alleges that SDA has only financed approximately \$361 million worth of construction projects of its “approved” \$1.3 billion LRFP. Id. at ¶¶ 327-335. JCBOE also claims that it has been forced to “siphon funds from its instructional budget” to make necessary repairs. Id. at ¶ 333.

The School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to -71, is a wealth-equalized formula that calculates State school aid based on a district’s

ability to contribute to its own school budget. N.J.S.A. 18A:7F-53. The calculations begin with the adequacy budget, an estimate of what it costs to provide the core curriculum standards (CCCS) based on the enrollment and student characteristics of a district. N.J.S.A. 18A:7F-51. The adequacy budget was “designed to provide sufficient resources and at the same time incentivize fiscal efficiency.” Abbott XX, 199 N.J. at 173. The adequacy budget is based on actual salaries and other data from districts across the State. Abbott XIX, 196 N.J. at 554.

Districts are not required to set their own budget at the adequacy budget and are free to use their own expertise to meet their unique needs. The statute entrusts districts with the ultimate responsibility to adopt “a budget that provides for a thorough and efficient education.” N.J.S.A. 18A:7F-5(c). 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 district is spending above or below adequacy); N.J.S.A. 18A:7F-68 (considering whether district is spending above or below adequacy in determining amount of reductions in state aid); N.J.S.A. 18A:7F-5d (considering whether district is spending above or below adequacy in determining its required local share).

State aid is allocated to the district based on the district’s ability to contribute to its budget. The district’s contribution is called its “local fair share” or

“LFS” and is determined by “indexing the district’s property wealth an aggregate income using statewide multipliers.” Abbott XIX, 196 N.J. at 557. State aid is then calculated by subtracting the district’s LFS from its adequacy budget to determine equalization aid. Abbott XX, 199 N.J. at 153; see also N.J.S.A. 18A:7F-52(a). As a result, wealthier municipalities will contribute more to their districts’ budget than less wealthy municipalities. Id. at 153, 156. The SFRA does not require local districts to meet their LFS. N.J.S.A. 18A:7F-5(b). Districts 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.

When the SFRA was enacted, the Legislature recognized that some districts were not taxing at the level of their LFS. The SFRA helped during the transition in the form of adjustment aid. The State provided adjustment aid to maintain State funding at a level equal to its FY2008 State aid allocation, plus two percent. N.J.S.A. 18A:7F-58. 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. It was 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.

In 2017, the Legislature enacted Chapter 67 to implement several measures intended to equitably allocate resources across the State including increasing the levy cap up to the LFS for certain districts, requiring some districts to raise a larger local levy, eliminating aid growth caps, and phasing out adjustment aid over a period of six years. See N.J.S.A. 18A:7F-38; N.J.S.A. 18A:7F-68. The Court envisioned the SFRA would necessarily evolve over time, and it “tethered” its decision “to the State’s commitment diligently to review the formula after its initial years of implementation and to adjust the formula as necessary based on the results of that review.” Abbott XX, 199 N.J. at 169. By increasing the levy cap, the Legislature acknowledged that certain districts spending under adequacy had the ability to contribute more to their local contribution.

Here, the Court finds that the SFRA as applied to Jersey City does not violate the constitution. There is nothing inherently unfair or unconstitutional about calculating State aid based on a district’s LFS. It is not the State’s responsibility to make up the difference when a state does not raise its local fair share. Adjustment aid was intended to be a temporary measure. The State has not required JCBOE to raise its LFS “overnight.” Moreover, JCBOE has the capacity to increase its taxes without experiencing municipal overburden. The amendments

to the SFRA are constitutional and the payroll tax has aided JCBOE while it increases its local tax levy.

First, it is constitutional for the State to expect JCBOE to contribute to its budget. 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 I, 69 N.J. at 142. The LFS is the mechanism by which the State delegates a portion of the financing for education to the districts, based on their ability to pay.

Second, it is not the State's constitutional obligation to subsidize the district's local fair share to ensure that a district is spending an amount equal to its adequacy budget. JCBOE argues that if there is a shortfall in full funding to the adequacy budget because the district has not levied up to its LFS, the State must make up the difference. See Plaintiff's Br. in Opp. 31-32. But the SFRA defines equalization aid to be paid by the State as the difference between a district's adequacy budget and its LFS. N.J.S.A. 18A:7F-53.

Third, adjustment aid was intended to be a temporary measure. JCBOE argues that adjustment aid was intended to fill any local contribution shortfall to bring each district up to its adequacy budget. See Pls.' Br. in Opp. 31, 41.



However, as JCBOE points out, the purpose of the adjustment aid was to provide districts with time to raise their local levies. See Pl.’s Br. 14; see also N.J.S.A. 18A:7F-68(b) (providing gradual schedule for elimination of adjustment aid). The State has not expected JCBOE to reach its LFS “overnight,” if at all. It provided a six-year period for the gradual elimination of adjustment aid, FY2020 to FY2025, during which time the District can incrementally raise its local tax levy, implement budgetary and cost saving measures, or a combination of the two, based on its needs and priorities.

Fourth, JCBOE has demonstrated it is capable of contributing its local share. JCBOE has been under-contributing to its LFS because JCBOE’s ability to contribute locally increased, but its actual contribution did not rise proportionally. JCBOE’s income and property wealth has risen dramatically relative to other districts in the State, increasing its LFS. DSOMF ¶¶ 33-58; Pl.’s Br. in Opp. 12. It is undisputed that JCBOE’s LFS has increased 171% between FY2009 and FY2023, from \$196,262,527 to \$532,016,412. Plaintiffs’ Response to DSOMF ¶¶ 33, 47. Between FY2010 and FY2018, in part because of tax levy caps, JCBOE under-taxed compared to its LFS, raising between 45% and 32% of its LFS. DSOMF ¶¶ 34-42; Plaintiffs’ Response to DSOMF ¶¶ 34- 42. The amount of State aid JCBOE received significantly exceeded the amount of formula aid that it

should have received. See, e.g., DSOMF ¶¶ 17-32 (peak overfunding occurring in FY2021, when it received aid that was 133% more than its uncapped formula aid); Plaintiffs’ Response to DSOMF ¶¶ 17-32. JCBOE argues that it will be unduly burdened by the gradual reduction in adjustment aid because it will force the district to increase its local levy significantly to fully fund its adequacy budget. Pl.’s Br. in Opp. 33. But such an assertion lacks any evidence in the record. The municipality is not presently experiencing municipal overburden. Jersey City’s 2021 total equalized property tax rate of 1.402% was still well below the 2021 Statewide average equalized total property tax rate of 2.197%. DSOMF ¶ 56. JCBOE’s expert has determined that as of January 19, 2022, JCBOE has not experienced municipal overburden; Plaintiffs do not dispute that. (Plaintiffs’ Response to Defendants’ SOMF, ¶ 49). Should that change, the SFRA amendments contain guardrails to protect against municipal overburden. N.J.S.A. 18A:7F-68(c).

Fifth, the amendments to the SFRA are constitutional. JCBOE takes issue with the amendments, arguing that because it could not and did not meet its LFS in the past, it does not have to take any action to close its so-called “local levy gap.” Pl.’s Br. in Opp. 29- 33. With the SFRA amendments, the State took steps to distribute 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.

Sixth, 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 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). The payroll tax has provided sufficient assistance to JCBOE while it gradually increased its local levy during the transition period of eliminating adjustment aid. See Cert. of Counsel, dated November 9, 2022, Ex. 1 (Payroll Tax Bank Records).

Finally, JCBOE fails to show that its students are not receiving T&E. JCBOE contends that it is unable to meet its constitutional obligation because the State did not fully make up the shortfall in local contribution. However, JCBOE has failed to provide sufficient facts to show that its students are not receiving T&E. See Abbott II, 119 N.J. at 313 (explaining that claim for deprivation of T&E 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”); Stubaus v. Whitman, 339 N.J. Super. 38, 56 (App. Div. 2001) (plaintiffs must assert significant “educational deficiencies” to establish T&E claim). On September 14, 2022, the State returned full local control to JCBOE because JCBOE is “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. See Final Qualitative Report (referenced above); Department of Education, Transition Plan for the Return of Local Control to Jersey City Public Schools (Sept. 2022). Such is not the stuff of a successful T&E claim.

As to Mr. Wyn's certification, it does not raise any disputes of material fact. Rather, his conclusions raised legal issues regarding what level of funding is necessary to provide T&E, the Adequacy Budget, and the temporary nature of Adjustment Aid. For instance, he asserts that JCBOE would have to increase its local levy by 114% of its 2019-20 level for it to fund "at the level required by the Adequacy Budget," and that SFRA's 2% cap has made it impossible for JCBOE to fund its LFS in order "to reach adequacy." Id. at ¶¶ 161-62. However, SFRA allows for the district to "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). Furthermore, the State provides Equalization Aid, which is the difference between the adequacy budget and the LFS, not the required local share. N.J.S.A. 18A:7F-53.

JCBOE's claim that the State must seek additional funding for the school facilities program is the subject of a motion in aid of litigants' rights that remains pending before the New Jersey Supreme Court in Abbott v. Burke, Docket Number 085333, and therefore the Court dismisses JCBOE's ECFCA claim. Moreover, JCBOE's claim disregards the statutory and sequencing process that has been established to rank and prioritize school facilities projects in SDA districts. N.J.S.A. 18A:7G-5(m)(2). Simply because the LRFP was approved does not mean that individual school facilities projects will be approved.

Accordingly, the Court grants Defendants' motion for summary judgment and denies Plaintiffs' application for same.

