

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
BOARD OF DIRECTORS MEETING  
WEDNESDAY, MARCH 4, 2020**

A meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held on Wednesday, March 4, 2020 at 9:00 A.M. at the offices of the Authority at 32 East Front Street, Trenton, New Jersey.

Participating were:

Robert Nixon, Chairman  
Michael Kanef (Treasury)  
Bernard Piaia (DOE)  
Stephen Martorana (EDA)  
Kevin Luckie (DCA)  
Kevin Egan  
Richard Elbert  
Loren Lemelle  
Michael Maloney  
Mario Vargas

being a quorum of the Board. Mr. Nixon, Mr. Egan, Mr. Elbert, Mr. Kanef, Ms. Lemelle and Mr. Piaia participated in the meeting by teleconference.

At the Chairman's request, Manuel Da Silva, chief executive officer; Andrew Yosha, vice president; Jane F. Kelly, vice president and assistant secretary; Donald Guarriello, vice president and chief financial officer; Albert Barnes, chief counsel; Cecelia Haney, deputy chief counsel and administrative practice officer; and Jane Folmer-Kelleher, ethics manager of the SDA, participated in the meeting. Joy Johnson of the Governor's Authorities Unit (GAU) also participated in the meeting.

The meeting was called to order by the Chairman of the Board, Mr. Nixon, who requested that Mr. Vargas lead the Members and all in attendance in the Pledge of Allegiance. The Chairman then asked Ms. Kelly to read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice had been sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting, and was duly posted on the Secretary of State's bulletin board at 20 West State Street in Trenton, New Jersey. Ms. Kelly then conducted a roll call and indicated that a quorum of the Members was present.

### ***Approval of Meeting Minutes***

The Chairman presented for consideration and approval the minutes of the Board's February 5, 2020 Open Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Vargas and seconded by Mr. Luckie, the Open Session minutes of the February 5, 2020 SDA Board meeting were approved by the Board upon its unanimous vote in favor of the resolution attached hereto as ***Resolution 4a***.

Next, Mr. Nixon presented for consideration and approval the minutes of the Board's February 5, 2020 Executive Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Vargas and seconded by Mr. Luckie, the Executive Session meeting minutes of the February 5, 2020 SDA Board meeting were approved by the Board upon its unanimous vote in favor of the resolution attached hereto as ***Resolution 4b***.

## *Authority Matters*

### *CEO Report*

The Chairman then asked Mr. Da Silva for the Report of the CEO. Mr. Da Silva gave an update on projects in the procurement stage. He reported that on February 5, 2020 the Board approved award of a design-build contract to Epic Management for the Plainfield Woodland ES project. He added that the notice of award for the project was issued on February 21, 2020 and that staff expects to hold a kick off meeting this month.

With respect to projects in the constructability stage, Mr. Da Silva said that the constructability review phase is underway for the Keansburg Port Monmouth Road School project.

Turning to design-build projects in the design phase, Mr. Da Silva informed the Members that the design-builder is performing site verification activities and design phase services for the Perth Amboy HS project. He said that staff expects to advance a recommendation of award for construction management services at the April Board meeting.

Mr. Da Silva reported that all design-build projects are moving along smoothly and on schedule.

Next, Mr. Da Silva gave an update on design-bid-build projects in the construction stage. He advised that for the Orange Cleveland Street ES project, Brockwell & Carrington mobilized onsite on February 19, 2020. He noted that site clearing and fencing will begin this week. For the Orange HS project, he said that the building permit was issued on February 26, 2020 and Terminal Construction is starting footings and foundations work on March 2, 2020.

Mr. Da Silva then discussed projects in the programming stages. He said that SDA's engaged design consultant, DRG, has finalized its report on existing building conditions for the

Hoboken Demarest ES project. He added that DRG has commenced options development for application of the educational program within the existing building. He reported that for the Union City New Grade 7 to 9 School project, programming refinement discussions and SDA in-house design development activities are ongoing. He noted that the project will be advanced through a design-build delivery method. He added that staff has initiated site acquisition activities.

Turning to Authority events outreach and other activities, Mr. Da Silva said that on February 12, 2020 SDA staff met with the Camden HS Advisory Committee (Committee) to provide an update on the construction of the new High School. He reported that the Committee members were very pleased with the progress of the school.

Mr. Da Silva informed the Members that this afternoon he will be participating in the Read Across America program at the Perth Amboy Rose M. Lopez School.

Next, Mr. Da Silva said that, tomorrow, he will participate in the annual Construction Entrepreneurs Networking Seminar conference.

In closing, Mr. Da Silva reported that SDA staff is working to schedule a community meeting in Orange to discuss the Orange High School and Cleveland Street Elementary School projects with the community there.

### **Appointment of Records Custodian**

At the Chairman's request and referencing the memorandum that was provided to the Members in advance of the meeting, Mr. DaSilva explained that, pursuant to the Open Public Records Act (OPRA) (N.J.S.A. 47:1A-1 et seq.), requests by members of the public for public documents shall be handled by a public entity's "Records Custodian". He said that the Act defines "Records Custodian as the "...officer officially designated by formal action of that agency's director or governing body..." to perform this function. He advised that management is

recommending that the Board elect SDA senior ethics manager Jane Folmer-Kelleher to serve as the Authority's Records Custodian. He informed that Members that Ms. Folmer-Kelleher has been serving as the Authority's interim records custodian since she was elected to that position by the Board in August 2019. He said that she previously served as the Authority's records custodian from 2006 to 2008 and is well qualified to serve in this role for the Authority once again.

Upon a motion by Mr. Vargas and seconded by Mr. Maloney, the Board approved the nomination of Jane Folmer-Kelleher to serve as the Authority's Records Custodian with the Members' unanimous vote in favor of *Resolution 5ai*.

Mr. Nixon thanked Ms. Folmer-Kelleher for her work as the Authority's records custodian and ethics manager, and for her patience in doing both very difficult jobs. Ms. Folmer-Kelleher thanked the Chairman and the Board for their confidence in her.

### ***Audit Committee***

Mr. Nixon, as Audit Committee Chairman, informed the Board that the Committee met on February 18, 2020 at which time management presented the January 2020 New Funding Allocation and Capital Plan Update report. He advised that, during the reporting period, there were no changes in any of the SDA District reserve balances. He added that the reserve balance for the Regular Operating Districts (RODs) increased by \$1.9 million during the reporting period due to a reduction in state share for grant projects nearing completion.

Next, Mr. Nixon reported that the Internal Audit Division (IA) provided the Committee with the 2020 proposed Audit Plan. He said that IA proposed six (6) project audits. He advised that four (4) of the project audits relate to schools that are already completed and two (2) audits relate to projects that will be completed in 2020. He said that the proposal also included twelve (12) real-time project audits along with five (5) operational audits. Mr. Nixon reported that IA

presented (5) open audit recommendations and three (3) open suggestions for improvement. He said that fifteen (15) recommendations and one suggestion for improvement have been closed since the last report. Mr. Nixon thanked Mr. Green, his staff of auditors and the executive team for their hard work.

In continuing, Mr. Nixon discussed the preliminary December 2019 Monthly Financial Report. He emphasized that this is a *preliminary* report as the financial statements are currently under review by the Authority's independent auditors. Mr. Nixon advised the Members that the Authority's operating expenses (Actual vs. Budget) for the year-to-date period totaled \$16.4 million, down \$2.8 million as compared to the budget for the corresponding period. He explained that this decrease is mainly attributable to a decrease in payroll and benefits costs (\$1.9 million) due to fewer full time employees. He reported that school facilities project expenditures (Actual vs. Forecast) for the year-to-date period total approximately \$309.6 million, approximately \$22.4 million lower as compared to the capital spending forecast for the corresponding period. He advised the Members that this variance is the result of lower than forecasted expenditures for grant activity (\$38 million), design services—net of cost recovery settlement (\$4.7 million), property acquisitions (\$2.2 million), lower than projected payroll expense allocations (\$2.4 million), and other project related costs (\$3.1 million). He noted that this decreased spending is offset by an increase in construction activity (\$25.3 million) and school furniture purchases (\$2.2 million). Mr. Nixon then reported that project expenditures (Actual vs. Prior Year Actual), at approximately \$309.6 million, are lower by \$31.5 million when compared to the corresponding prior year period. He explained that the variance is due to decreased grant activity, project insurance costs, design services—net of cost recovery settlement, and other project related cost. He added that this decreased spending is offset by an increase in spending for construction work (\$28.6 million) and school furniture purchases.

In concluding, Mr. Nixon said that, since program inception, 86% of the funds authorized for the SDA districts have been disbursed. Additionally, he noted that 96% of all SDA disbursements relate to school facilities projects, while 4% relate to operating expenses. He advised that the estimated value of active school facilities capital projects, along with emergent and regular operating district grant projects, is approximately \$2 billion.

Finally, Mr. Nixon advised that, in compliance with changes the Board made to the SDA Bylaws and Audit Committee Charter, management discussed recent personnel actions with the Committee. He said that management also provided an update on personnel-related pending litigation. Mr. Nixon explained that he cannot take questions regarding these matters as they were considered in the Executive Session of the Committee meeting.

### *School Review Committee*

#### **Extension of Existing Regulations: Notice of Readoption without Amendments – Procurement of Design-Build Contracts N.J.A.C. 19:36**

Next, Mr. Nixon asked Mr. Luckie to provide the report of the School Review Committee (SRC). Mr. Luckie reported that the SRC met on February 18, 2020 at which time one item was discussed. Mr. Luckie said that management is seeking ratification of the filing of a notice of readoption (without amendments) and an extension of the existing regulations governing the procurement of design-build contracts, N.J.A.C. 19:36 (the Rules). He advised that in February 2013 the Board approved the final adoption of the Rules which established requirements, standards and procedures for the Authority's procurement of design-build contracts. He said that the Rules were formally published in the New Jersey Register on March 4, 2013 and will expire on March 4, 2020. He explained that given that the expiration of the Rules was imminent, staff filed a notice of readoption to extend the expiration of the Rules. Mr. Luckie explained that management followed an expedited process that permits regulations to be readopted without

amendments, and without prior publication or public comment, with the filing of a notice of readoption with the Office of Administrative Law at least thirty days prior to the expiration of the regulations. He said that management now is asking the Board to ratify that action. He emphasized again that the proposed notice of readoption process will involve no amendments or modifications to the Rules and that, upon readoption, the Rules will remain in their current form. Mr. Luckie informed the Members that management intends to review and consider revisions to the Rules in the next several months and will present any proposed changes to the Board at a later date prior to publication for public comment. He said that, following Board ratification and expiration of the veto period, the Rules presented to the Board today would be published in the New Jersey Register.

Ms. Haney informed the Members that ratification of the notice without amendments is intended to provide the SDA additional time to review the 19:36 Rules that are the design-build rules which allow for a “price and other factors” process to procure a single entity to do design and construction of a project. She said that staff ultimately will review these Rules together with the 19:38B Rules which are the “price and other factors” rules for procurement of design-bid-build contractors.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon a motion duly made by Mr. Vargas and seconded by Mr. Maloney, the proposed Extension of Existing Regulations and Notice of Readoption of regulations (without amendments) for the Procurement of Design-Build Contracts were approved with the Board’s unanimous vote in favor of *Resolution 7a*.

### ***Public Comments***

Mr. Nixon then opened the Public Comments portion of the meeting. He asked that individuals who wish to address the same matter may do so together. He asked that comments

be limited to three (3) minutes in duration. He then turned the meeting over to the Vice-Chairman, Mr. Vargas, and left the meeting. At the Vice Chairman's request, Ms. Kelly invited Heather Sorge to the podium. Ms. Sorge advised the Board that she is the campaign organizer for Healthy Schools Now (HSN) and the New Jersey Work Environment Council (WEC). She said that she is before the Board today to talk about the steps the SDA has taken to address the mercury in flooring issue. She said that she was very pleased to see that the Authority has continued to make progress, adopted additional certifications from the manufacturers and is proactively testing all the floors that have been installed. She stated that she hoped the rest of New Jersey would follow suit. Ms. Sorge said that her organization was happy to see that the relevant Department of Education (DOE) guidelines were posted on the SDA website. She said that HSN/WEC is disappointed that the Department of Health did not adopt the strictest standards possible for mercury vapor. She stated that HSN/WEC believes that there is no safe level of mercury and that the most protective standards should be adopted to protect the children. She said that DOE's guidance was lacking in terms of safety or protocols for custodians and others coming in contact through their cleaning of these floors. She noted that the guidelines do not mention any remediation protocols. Additionally, Mr. Sorge expressed her disappointment with the guidance documents from the PESHU, i.e. Pediatric Environmental Health Specialty Unit. She stated that they are misleading in that they send forth a false sense of security that mercury vapor hazards for children are not a big issue. She said that there has not been a study on the long term effects of mercury vapors on children and that she finds it somewhat irresponsible to make a broad statement without enough facts to back up PESHU's documents. Ms. Sorge emphasized that her organization is extremely grateful to the Authority for moving forward on this issue and that she looks forward to working together on the next steps.

Ms. Julienne La Chance, accompanied by Caritina Hernandez, Linda Stork, Maria Juárez, Sara Vidal, Andres Jojas and Ms. Sorge, addressed the Board. Ms. La Chance stated that she was speaking today to make the Board aware of the current issues regarding the New Brunswick (NB) Lincoln Annex School (the School). She stated that Rutgers University, in collaboration with the Robert Wood Johnson (RWJ) Hospital intends to expand the hospital on the site of the existing School. She advised that the School serves children from grades 4-8 and is one of the top performing schools in NB. She said that DEVCO is the development company collaborating with RWJ and Rutgers. She noted that DEVCO has proposed a plan to the NB Board of Education (NBBOE) to construct a new school to replace the School. Ms. La Chance said that the current proposal suggests that the students move to a converted warehouse at 40 Van Dyke in NB which is over two (2) miles away from the School's current site. She explained that the School serves a student body which is 94% Latino and 86% economically disadvantaged, and advised the Board that many of the families would have serious problems with transportation to the proposed off site location. She said that students who attended school in the warehouse in the past have opined that the space is completely insufficient to serve as a school. She added that DEVCO has actually proposed two (2) sites as possible sites for a replacement school-- one at 131 Jersey Avenue and another at 50 Jersey Avenue. She advised that both locations are "brownfields" which, per the federal Environmental Protection Agency, means that "construction may be complicated by the potential presence of a hazardous substance, pollutant or contaminant". Ms. La Chance said that the primary replacement site at the 131 Jersey Avenue location is 34% flood plain. She noted that the floodway runs through the site which frequently causes the road leading to that location to be closed. She said that there are a number of related concerns, one being that the NBBOE has been conducting business in a manner that is lacking in transparency. She said that NBBOE has held meetings which journalists were unable to attend.

She said that she and those accompanying her want to bring this concern to the Board because NB has modified their Long Term Development Plan. Ms. Maria Juarez then took the podium to advise the Board that she is a parent and that she would like to echo what Ms. La Chance has said. She noted that she has not been well informed by the NBBOE. She said this is very disappointing for her children to see the lack of respect the NBBOE has shown the impacted parents and students.

Next, Mr. Charles Kratovil addressed the Board. Mr. Kratovil reminded the Members that he had spoken to them in January about this issue at the School. He said that, as a SDA district, the NB District doesn't have any schools to spare. He added that the district cannot afford to lose one of their best performing schools, let alone one that was just recently renovated and that cost local taxpayers \$22 million. He added that solar panels were put on the school this past summer. He said that it would be crazy to sell the school and even crazier to give it away, yet that is what local officials are proposing. Mr. Kratovil said that he knows that RWJ is a very powerful and influential organization and that the parents need the state to step up because if the state does not, there will be situations where SDA districts essentially have privatized schools, i.e. where the SDA is not going to fund schools, corporations will decide when and where schools will get built and they will run roughshod over the communities that are in the way of their redevelopment agenda. He said that this is essentially what is being piloted in NB. He said that it's unacceptable--that this is a good school, a Catholic school that closed. He said that the BOE did a good thing by purchasing it, spending the money to upgrade it and open it in 2016. He added that it's gotten 3 ½ years of use and the community and children love it and don't want it to go. Mr. Kratovil said that common sense would dictate that you shouldn't close a school until there is a viable replacement ready to open. He said that the most egregious part of this proposal is that there is no concrete plan to replace this school. He added that there are some sites that

have been mentioned that have been privately owned, contaminated and would take years of work just to get a shovel in the ground. He said that he understands that some of the Members may be familiar with the building and the SDA was intimately involved in putting it up there. He said it's one thing to have a flood or fire or overcrowding at a facility resulting in the need to use a less than adequate space or a space that's a good distance from the neighborhood, but this is not that situation here. He said that this is a situation where there is a functioning neighborhood school and that it would be a disgrace to give it up.

Ms. Kelly asked Mr. Brian Kula to address the Board. Mr. Kula said that he is present to talk about the School but from a different angle. He said that, to his knowledge the information that has been presented to the public has been extremely vague and very hard to follow. He advised the Board that, to his knowledge at this point, RWJ has offered \$55 million to assist with the building of a replacement school. He added that prior to this issue there was a school called Redshaw, a situation that occurred years before, and it cost \$50 million to build that school. He said that that price did not include land acquisition. He added that the \$55 million contribution that has been proposed is not sufficient. Mr. Kula said that the public, parents and families are wondering where the rest of the money to build the school is going to come from. He said that the NBBOE clearly stated at a BOE meeting that there will be no public tax dollars contributed by the City of NB and that the BOE will not be burdened. He said that the price tag is very vague. There are no exact details as to the amount of money to be contributed nor is there any plan for follow through. He said that all the decisions are being pushed through. Mr. Kula added that the residents and families of NB, the parents of these children and even the students have been standing up for themselves at meetings and trying to be heard but, unfortunately, in many cases they are being shut out. He requested and encouraged the involvement of SDA in the issue, saying that he understands that there could be some limitations on that. He said that any

SDA involvement would be great. Mr. Kulas asked if the SDA could encourage the Commissioner of Education in New Jersey to keep an eye out and, most importantly, to listen to the students and the families of the School. He emphasized that they are the most important people in this situation and they are the ones who are going to be burdened if things do not go right.

Next, Ms. Danielle Moore addressed the Board. Ms. Moore said that the School was once St. Peter's HS in NB, the smartest school in NB. She said that the School has the highest test scores throughout the State of New Jersey. She asked that the school not be demolished as it is a very comfortable place at a good location. She said that one proposed alternative site, the vacant lot located at 131 Jersey Avenue, has been an environmental hazard since 2011. She showed numerous pictures of the vacant lot and described the conditions there. She said that the \$55 million that has been discussed as a contribution towards a new school cannot support four drums of sanitary sewage. She said that every time it floods there it mixes with sewage, something that is well known in NB. She asked the Members to take the time to see how the flooding brings garbage there, which cannot be removed. She added that DEVCO cannot remove the sewage and it cannot be cleaned up. Ms. Moore asked that the School be allowed to remain in place, adding that the alternatives will put the children in danger. She asked that the Board take the time to investigate the situation.

Ms. Caritina Hernandez came to the podium, with Ms. Maria Juarez translating for her. Ms. Hernandez said that she is a parent of a Lincoln Annex student. She said that she has tried to speak with NBBOE President Diana Solis and the School Superintendent, Aubrey A. Johnson, Ed.D but that she has received no answers to her expressed concerns with the School situation. She said that officials continue to contradict themselves about the warehouse, i.e. one day they say there will be transportation provided for those who need it and the next day they say there

will not be transportation. She said that the place where they are planning to build a new school is contaminated and her worry is that the children will suffer health impacts. Ms. Hernandez spoke to her concerns regarding the need for children to have to cross a busy street with no traffic signs. She said that NB has had issues with a lack of adequate teaching staff and that the public is told that “there is no money” for that, but now they are now willing to throw away the \$22 million that was spent to remodel the School. She asked the Members to please look into this issue of great concern. She said that she is not here to just represent her child or herself but, rather, to speak for all the children and their parents who have been told to stay quiet and not voice their concerns. She thanked the Members.

Ms. Kelly asked Ms. Linda Stork to address the Board. Ms. Stork stated that she is very concerned with the situation at the NB School. She said that she is a mother and a longtime resident of NB who worked for the NBBOE for many years. She said that parents are being told that NB is not fully funded by the state and how the SDA has no money so that they should be bowing down to this wonderful opportunity. She said that the parents/others have been accused of being rumour mongers, adding that, in this case, the place where they intend to send our kids is in nobody’s neighborhood. She stated that the plan is to redevelop the industrial area but she has observed that redevelopment has only been for very high end housing, not for the parents of the 850 students who are going to their school in their neighborhood. She said that the latest they have heard on transportation for the children is that it would be provided to go to the warehouse but will not be offered once a new school is built. She stressed that the sites they have mentioned are not closer, adding that she knows grown men that have been jumped in the industrial area. She advised the Board that most of the industrial area consists of abandoned warehouses, that nobody lives there, and it is not a neighborhood. She noted that the public officials have retreated from this potential site a little because of all the publicity but, she added,

the parents have found out that this industrial area has been their plan all along and for a very long time. She said that they called a meeting the previous night, with only four (4) days notice, to change the Long Range Facilities Budget. Ms. Stork asked if the Members could give feedback about this situation. She said that when the SDA is looking at giving out money for schools, and the state is looking at how to make good with the funding formula, maybe they should consider that NB isn't trying hard enough with all the tax abatements they give away and deals they get into with private people.

Ms. Sorge asked if she could address the Members again for 30 seconds. She said that the School situation referenced by the previous speakers is the worst case of gentrification that she has ever seen. She said that the site upon which local officials are looking to build the new school is contaminated with asbestos, and we all know how dangerous that is. She noted that she has sent an OPRA request for all the information she can find. She said that she does not think that children should be in a situation where officials are hoping that a school can be built on contaminated ground with nobody knowing the full extent of the contamination. She also noted that the amount of years it would take to build the new school is unclear.

Ms. Kelly invited Sara Vidal to the podium. Ms. Linda Stork translated for Ms. Vidal. Ms. Vidal said that she lives in NB and is the mother of three children. She said she is here to talk about the School and the NBBOE. She said the NBBOE has not been working with the parents. She added that they have broken their promise that they would work with the parents i.e. this is not happening. She said that the public officials are acting in a despotic manner. She said they are making these decisions without talking to those who are affected. She said that this isn't right, that the parents pay their taxes and don't deserve to be treated like this. She said that parents are coming out and protesting but the NBBOE is not paying attention to them. Ms. Vidal

said she is hoping that the SDA Board can investigate this and make the public officials respect the public.

### *Adjournment*

There being no further business to come before the Board, upon motion by the Vice Chairman and with unanimous consent, the meeting was adjourned.

**Certification:** The foregoing represents a true and complete summary of the actions taken by the Board of the New Jersey Schools Development Authority at its March 4, 2020 meeting.

*/s/ Jane F. Kelly*  
Assistant Secretary