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March 5, 2019

Honorable Susan M. Scarola, ALJ
Office of Administrative Law
Quakerbridge Plaza, Building 9
Mercerville, NJ 08625-0049

Re: Leonor Alcantara et. al., v. David Hesse et. al.

OAL Docket No: EDU 11069-2014 S

Agency Ref. No. 156-6/14

Dear Judge Scarola:

As you know, I represent the Petitioners in the above referenced case. This letter is designed to supplement the letter, dated March 4, 2019, that I sent Your Honor seeking leave to file a motion for summary decision.

The gist of that letter was that there are no material issues of fact in dispute because: (i) the Commissioner of Education has certified for each of the last four years (essentially the life span of this matter) that the School Funding Reform Act of 2008 (SFRA) does not provide the Lakewood Public School District (LPSD) with sufficient resources to assure its students a thorough and efficient education (T&E); and (ii) the advance state aid given to LPSD in dramatically escalating amounts each year cannot be considered constitutionally relevant funding for LPSD to provide T&E.

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It is in that context that I received and reviewed the State's February 28, 2019 letter presenting Petitioners with a pared-down list of ten witnesses whom the State may call should there be an evidentiary hearing in July. Since the State has never indicated exactly what its theory of the case is, and since the State provided no real indication of what those witnesses would testify to, I found it impossible to determine what the point of the evidentiary hearing is, and, if it goes forward, how I might prepare for it.

The difficulty is traceable to the fact that the State's response to Petitioners' claims never permitted us to join issue. That has not only complicated my role as counsel to the Petitioners, but also Your Honor's role in resolving this matter.

My understanding is that for almost a century a core Black Letter principle of civil procedure, whether in the courts or in the Office of Administrative Law, is that the main purpose of the pleadings, as one commentator put it, "is to define and delimit with clarity and precision the real matter in controversy between the parties upon which they can prepare and present their respective cases. In

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addition it is the basis upon which the court will be called to adjudicate between them. Pleadings should not be evasive but must deal with the substantive points between the parties.”

Another commentator put it similarly, referring to six functions of pleadings at common law, including:

1. The first or Primary Function of Pleading is to reduce the controversy between the parties to a single, clear-cut, well-defined issue of Fact or of Law;
2. To reduce Questions of Fact to clear-cut issues by eliminating immaterial and incidental matter, thus narrowing the case to one or more specific propositions on which the controversy turns, thus operating as an aid to the Court in admitting or rejecting offers of evidence

As I have been urging upon Your Honor, the State should aid you in resolving, at long last, this matter by identifying precisely what is its objection to Petitioners’ constitutional claim. There seems to be only

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two possible State claims so narrowing them down should not be all that difficult.

One is that LPSD receives enough funding pursuant to the SFRA to provide its students with T&E. But that would involve challenging the Commissioner's annual certifications to the State Treasurer, as well as the public comments of the state monitors who have been assigned to LPSD for the past five years.

A second is that, even agreeing with the Commissioner that the SFRA does not provide LPSD with enough funding for T&E, advance state aid can augment the inadequate SFRA funding to enable LPSD to reach the T&E threshold. That would raise a material issue of fact, but it is a question that should never be reached. As I have asserted in my request for leave to seek a summary decision, whether advance state aid can be counted toward T&E funding raises a matter of law that should be decided in favor of Petitioners.

If the State has a theory of the case different than those two, it is long past time for the State to enlighten both the Petitioners and Your Honor. Perhaps once this is clarified, it may be possible for me, on behalf of

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Petitioners, and for Your Honor to evaluate the relevance of the State's witnesses. Of course, it would be useful for the State to provide some indication of what their witnesses would testify about.

After almost five years in the OAL it is long past time for Your Honor to move this matter to the Commissioner of Education as the agency head with a recommended decision.

Respectfully Submitted,

s/ Arthur H. Lang
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