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PRELIMINARY STATEMENT

FY 2018 is the fourth school budget for Lakewood prepared under the jurisdiction of the Department of Education Division of Finance and yet the gap between revenue and costs has increased. Petitioners moved for summary decision last year when 10 teaching positions and one administrator were eliminated. Students now face the loss of 119 teachers, 22% of all teachers in the district, and resulting class sizes of fifty students. Something has to be done.

Lakewood's FY2018 school tax levy is \$98,504,555 even though the SFRA requires only \$86,936,334 for the local fair share. The SFRA requires the state to pay \$25 million for its share of adequacy (equalization aid) but it has consistently paid only \$15 million for several years.

Petitioners allege that the SFRA is unconstitutional as applied to Lakewood. Pending outcome of the merits of this case, the state should be required to pay its share mandated by the present law to save the teachers and restore class sizes to their previous levels.

APPLICABLE RULES

N.J.A.C. 1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;
2. Include a finding that immediate and irreparable harm will

probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in

the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

N.J.A.C. 6A:3-1.6 Emergent relief or stay

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief, or a stay of that action pending the Commissioner's final decision in the contested case.

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(c) Any party opposing such motion shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6A:3-1.5. However, upon review, the Commissioner may:

1. Act upon such motion prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard;
2. Act upon such motion upon receipt of the answer; or
3. Transmit the motion to the OAL for immediate hearing on the motion.

(d) The Commissioner may decide a motion for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the

Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

N.J.A.C. 6A:13-3.1 Class size in high poverty districts

(a) A high poverty school district as used in this chapter means a district in which 40 percent or more of the students are "at-risk" as defined in P.L. 2007, c. 260. 7

(b) Class size in school districts in which 40 percent or more of the students are "at-risk" as defined in P.L. 2007, c. 260 shall not exceed 21 students in grades kindergarten through three, 23 in grades four and five and 24 students in grades six through 12; provided that if the district chooses to maintain lower class sizes in grades kindergarten through three, class sizes in grades four and five may equal but not exceed 25. Exceptions to these class sizes are permitted for some physical education and performing arts classes, where appropriate. School districts previously subject to N.J.A.C. 6A:10A and 6A:10 shall implement the class size requirements set forth in this section during the 2008-2009 school year and all other school districts to which this section applies shall plan to implement the class size requirements beginning in the 2009-2010 school year and implement in the 2010-2011 school year.

APPLICABLE CASES

Abbott v. Burke, EDU 5581-85, August 24, 1988. . . . .12

Abbott by Abbott v. Burke, 119 N.J. 287, 374 (N.J., 1990). . .16

Abbott by Abbott v. Burke, 149 N.J. 145, (1997). . . . .12

Abbott ex rel. Abbott v. Burke 199 N.J. 140, (N.J., 2009). . . .8

Jenkins v. Morris Township School District, 58 NJ 483 (1971). 14

McCarroll v. Bd. of Ed. of Jersey City, 13 N.J.A.R. 1, (1979)..13

PROCEDURAL HISTORY

On June 24, 2014, Petitioners and their parents filed a petition challenging the allocation method and the amount of State funding received by the Lakewood School District.

On July 7, 2014 Petitioners submitted an Amended Petition.

On September 2, 2014 the Respondents moved to dismiss the Petition for failure to name the Lakewood Board of Education as a party, for failure to allege a sufficient factual basis to demonstrate the Petitioners' standing, and because the remedies sought are not available in this type of proceeding. The Commissioner of Education subsequently sent the matter to the Office of Administrative Law.

On January 14, 2015 Professor Paul L. Tractenberg moved for leave to participate.

On March 11, 2015 the Court granted Professor Tractenberg leave to participate.

On July 23, 2015 the Court denied Respondents' motion to dismiss.

On February 19, 2016, Petitioners moved for summary decision.

On July 19, 2016 the Court denied the motion for summary decision.

On October 4, 2016 the Lakewood Board of Education moved to



participate.

On November 21, 2016 the Court granted the Lakewood Board of Education's motion to participate.

STATEMENT OF THE FACTS

1. The Lakewood School District needs to adopt an operating budget for FY2018 of \$147,922,935 in order to maintain the level of education that it provided last year.

(Exhibit 12, E75).

2. Revenue for FY2018 is \$132,931,736. (Id. at E74).

3. Lakewood needs "another \$15,000,000 in order to provide the level of education it provided last year."

(Certification on Laura Winters, paragraph 11).

4. Lakewood will lose approximately 119 members of its certified teaching staff unless additional funding is found. (Id. at 12).

5. Thirty-nine tenured teachers' positions were terminated through reductions in force. (Exhibit 3, E10-11).

6. The cuts in teaching staff will produce average class sizes of 50. (Id. at 13).

7. The Adequacy Budget in Lakewood is \$111,335,015.

("ADQ\_BUD," Exhibit 8, E59).

8. The local fair share is \$86,936,334. ("EQA\_LSHR," Exhibit 8, E59).
9. The FY2018 Lakewood tax levy is \$98,504,555. (Exhibit 12, E74).
10. The state's share (equalization aid) of the adequacy budget is \$24,398,681. ("EQA\_FQ," Exhibit 8, E59).
11. FY2018 State equalization aid is \$15,070,904. (Exhibit 8 PBD\_EQA, E60).
12. Lakewood is ranked 555 out of 564 New Jersey municipalities in per capita income. (Exhibit 5, E45).
13. 5,920 students attend Lakewood public schools. ("ENC\_RES" Exhibit 8, E60).
14. 27,425 students attend Lakewood nonpublic schools. (Exhibit 8, E52).
15. 83.4% of 2015 Lakewood public school students are Hispanic and 10% are African-American (Motion for Summary Decision at 7).
16. 1,420 students are classified as Limited English Proficiency. (ENC\_LEP, Exhibit 8, E60).
17. 19,180 or 70% of children attending nonpublic schools are low-income. (Exhibit 8, E52).
18. 4,384 children in Lakewood are classified as students with disabilities. (Exhibit 8, E52).

19. Lakewood is mandated to provide 21,510 regular children with remote transportation ("TRN\_EREG," Exhibit 9, E60).
20. The cost of state mandated transportation is \$27,383,442 in FY2018. (Exhibit 12, E75).
21. Lakewood sends 296 students to private schools for the handicapped. ("ENC\_PSH," Exhibit 8, E60).
22. The cost of tuition providing a Free and Appropriate Public Education consistent with student IEPs is \$34,434,433. (Exhibit 12, E75).
23. Revenue is \$132,931,736. (Exhibit 12, E74). \$62 million or 47% is consumed by transportation and tuition leaving only \$70 million for T & E.
24. Lakewood spends \$9,677,275 on Speech, Occupational Therapy, Physical Therapy and Related Services; Other Support Services, and the Child Study Team. (Exhibit 14, E96-97)
25. The above services, transportation and tuition consume \$71,495,150 in a district in which adequacy is calculated at \$111,335,015.
26. The 2014-15 Total Spending Per Pupil Cost in Lakewood was \$24,305, consistent with other urban districts. (Exhibit 10, E65).
27. Classroom spending per pupil was \$7,365 in 2004. It

has gone down to \$6,600 in 2016, the lowest out of the 103 large districts in the state. (Exhibit 9, E63).

28. The state average classroom spending per pupil is \$8,942. (Exhibit 10, E65).

29. In 2015-16 Lakewood spent \$93 per pupil on classroom supplies/textbooks, the lowest of the 103 large districts in the state. The state average is \$300. (Id.)

30. The 2015-16 median teacher salary in Lakewood was \$50,436, lowest of the 103 large districts in the state. (Id.)

31. The ratio of students to teachers in Lakewood is 13.1 whereas the average ratio of students to teachers in Abbott districts is 11.3. (1:42).

32. Lakewood spends \$131 per pupil for legal services, the highest of any large district. (Id.)

33. The average composite SAT score for Lakewood students is 1101 whereas the Abbott average is 1191 and the state average is 1514. (Exhibit 11, E70).

34. Only 37.2% Lakewood students are in post-secondary education 16 months after graduation whereas the state average is 76.8% (Exhibit 11, E69).

35. Lakewood births have risen over the last twenty years with 4,464 births in 2015 compared 4,245 in Newark. (Exhibit 15, E99-102).

36. The High School Proficiency Assessment Language Arts scores for Lakewood from 2008-2014 were lower than the average and median scores of the Abbott districts (Exhibit 13, E84).

37. The High School Proficiency Assessment Mathematics scores for Lakewood were about half the points of the state average and more than ten points lower than the average and median of the Abbott districts every year since 2009 (Id. at E85).

38. The Grade 8 GEPA and NJ ASK Language Arts score for Lakewood was below the average and median of the Abbott districts every year since 2004. (Id. at E89).

39. The Grade 8 GEPA and NJ ASK Mathematics score for Lakewood was below the average and median of the Abbott districts every year since 2006. (Id. at E90).

40. The Adjusted Cohort Graduation Rate was at or below the average and median of the Abbott district for the last four years. (Exhibit 5, E35).

STANDARD FOR EMERGENCY RELIEF

N.J.A.C. 6A:3-1.6(b) provides:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

## LEGAL ARGUMENT

The New Jersey Constitution entitles the children of the State to a "thorough and efficient education." N.J. Const. art. VIII, § 4. To meet the constitutional duty, the School Finance Reform Act of 2008 (SFRA) "allocates state resources to school districts, while also requiring certain levels of funding at the local level." Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 152 (2009). The Adequacy Budget is the core calculation of the money needed to provide T & E.

The State share in the Adequacy Budget is referred to as Equalization Aid provided by N.J.S.A 18A:7F-52 and N.J.S.A 18A:7F-53. The local share of the adequacy budget is the amount local taxpayers are required to contribute in support of the Adequacy Budget. That amount is determined by a district's equalized property wealth and its equalized income wealth.

Petitioners filed the present case because the calculation of adequacy in Lakewood bears no relation to the mandated expenses in the district. The most recent calculation of adequacy in Lakewood, last year, was set at \$111,335,015. The local share was set at \$86,936,334. According to the statute, the state share is \$24,398,681 (equalization aid).

Lakewood is unique because 27,425 students attend nonpublic

schools. As Lakewood births have increased over the last twenty years, 4,464 births in 2015 compared to 4,245 in Newark, the total number of nonpublic students in grades K-12 has increased at a rate of approximately 2,500 per year. (Certification of Laura Winters, paragraph 4). The state law requiring the transportation of nonpublic students living remote from their schools and the federal mandate to provide special needs children with a Free and Appropriate Public Education, in a district of over 33,000 students, makes the state's methodology of calculating the adequacy budget in Lakewood based solely on 6,000 students wholly *inadequate*. Lakewood needs at least \$173,152,890 to cover the mandated \$61,817,875 in tuition and transportation for 33,000 students living in the district in order to be able to provide \$111,335,015 for its public schools, adequacy under the law. This gap between the reality of the cost for 33,000 children and the myth that Lakewood is a district of 6,000 students has decimated programs and courses, making what was once a high achieving district into one of the lowest in the state. This is heart of the matter that Petitioners will present after the completion of discovery.

Petitioners move for emergency relief because 119 teaching positions have been terminated effective June 30. Classes will have 50 students next year in a district already deprived of



constitutional adequacy.

The commissioner has the authority under the present law to provide Lakewood with \$24,398,681 in equalization aid. This is the state's share of adequacy in Lakewood. It would be fair for the state, which year after year has been contributing only \$15 million, \$9.3 million less than its share under the law, to now pay its full share to avert the disaster. The tax levy of Lakewood, one of the lowest income municipalities in the state, ranking 555 of 563 in per capita income, is set at \$98,504,555 in FY2018, substantially more than the \$86,936,334 that the SFRA requires for the local fair share. Hence, the state currently pays almost \$10 million less than required by law and the local tax base pays over \$10 million more. Requiring the state to pay its share of adequacy would increase the district's \$132,931,736 revenue by \$9.3 million saving most, if not all, the teaching positions.

I. PETITIONERS WILL SUFFER IRREPARABLE HARM IF 119 TEACHERS ARE FIRED AND CLASS SIZES INCREASE TO 50 BECAUSE PETITIONERS HAVE ONLY ONE OPPORTUNITY TO BENEFIT FROM A THOROUGH AND EFFICIENT EDUCATION AND THE TIME IS NOW.

N.J.A.C. 6A:13-3.1 provides that "Class size in school districts in which 40 percent or more of the students are 'at-risk' as defined in P.L. 2007, c. 260 shall not exceed 21 students in grades kindergarten through three, 23 in grades four

and five and 24 students in grades six through 12.” Id.<sup>1</sup> At-risk students in Lakewood public schools exceed 40 percent. At-risk students were reported as 87.93% (FY 2015), 90.96% (FY2016), 86.99% (FY 2017) and 75.06% (FY 2018). (“ENC\_LIRT,” Exhibit 8, E54-60).<sup>2</sup> Class sizes already exceed those allowed by the administrative code before the present reductions in force. As mentioned, at the May 8, 2017 meeting of the Lakewood Board of Education, the positions of tenured and non-tenured teachers were terminated reducing the district’s teaching force by 22 percent. The fifty students in a class is double the amount allowed by N.J.A.C. 6A:13-3.1.

Thirty-nine tenured teachers have lost their positions. These teachers will not be available for the next school year if the reductions in force are not reversed soon. The remaining 60 plus non-tenured teachers, some of whom have up to four years of

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<sup>1</sup> “At-risk” is defined by N.J.S.A. 18A:7F-45 as “those resident pupils from households with a household income at or below the most recent federal poverty guidelines available on October 15 of the prebudget year multiplied by 1.85.” The federal poverty guidelines provide that the “income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels. . . .” 42 U.S.C. §1758(b)(1)(B). The terms “at-risk,” “low income” and “free and reduced lunch” designate the same pupils.

<sup>2</sup>The district’s recent participation in the Community Eligibility Program (CEP) allows all students to receive free breakfast and lunch. Parent are now reported to not return the eligibility forms because their children still receive the service due the CEP. Before FY 2018, students did not receive free breakfast and lunch if the forms were not returned. Since fewer parents return the forms, the low-income percentage has decreased. This is a common trend in CEP districts.

experience teaching students in the low-income district, will also likely find other jobs. New teachers without experience teaching high numbers of at-risk children will have to be hired unless emergency relief is soon granted. The Abbott IV Court noted that quality of the teacher and class sizes has a substantial effect on education citing, "Richard J. Murnane, Interpreting the Evidence on 'Does Money Matter?', 28 Harv. J. on Legis. 457 (1991) (finding that money, if spent prudently on such things as teachers and class-size reduction, has a substantial effect on education)." Abbott by Abbott v. Burke, 149 N.J. 145, 193 (1997). Judge Lefelt, hearing Abbott first in the OAL, found that "larger urban class sizes and larger student bodies which tend to de-personalize the students' educational experiences also falls heaviest on potential dropouts." Abbott v. Burke, EDU 5581-85 (initial decision), August 24, 1988, at 224. Lakewood already has one of the lowest graduation rates in the state, 75%. Only 37.2% of Lakewood graduates are in a post-secondary institution 16 months after graduation, less than half the state average of 76.8%.

The loss of experienced teachers and larger class sizes will cause irreparable damage to students. The education they will lose cannot be restored even should this Court rule favorably on the merits. The case is already three years old, it has not yet

been resolved and matters have only gotten worse. The students of today will not be the beneficiaries of schools that improve after they graduate. The lost education will disadvantage them for life. Students have only one chance to get a high school education and if the state fails to provide it to them, they will either drop out of school, or graduate below the necessary standard. If the teacher jobs are not restored and the students end up in classrooms of fifty, irreparable harm will be done.

II. THE LEGAL RIGHT UNDERLYING PETITIONER'S CLAIM IS SETTLED BECAUSE THE STATE HAS A DUTY TO PROVIDE FOR THE MAINTENANCE AND SUPPORT OF A THOROUGH AND EFFICIENT SYSTEM OF FREE PUBLIC SCHOOLS.

Petitioners have a right under the New Jersey Constitution to receive a thorough and efficient public education. Currently, 5,920 students attend Lakewood Public Schools. They are entitled to the level of funding that the SFRA intended for them, the level of funding intended for 5,920 students, and in the case of Lakewood, most of whom are at-risk. Pending disposition on the merits, the Commissioner of Education has broad powers to allocate full funding under the law in order to provide T & E. "New Jersey's highest court has uniformly taken an expansive view of these powers, and has consistently upheld the Commissioner's authority to do whatever may be reasonably necessary to carry out the constitutional directive." McCarroll v. Bd. of Ed. of Jersey

City, 13 N.J.A.R. 1, 62 (1979).

The relief requested in this motion, full funding according to the statute, is exactly what the state monitor said was necessary at a March 24, 2015 meeting of the Lakewood Board of Education. In a video submitted to the Court by participant Paul Tractenberg, state monitor Mike Azzara can be heard saying, "they don't start using the state aid formula . . . and if state aid is continued to be held flat, this district does have a revenue problem not a spending problem in my eye, in my opinion." The Commissioner has the authority to fully fund Lakewood under the SFRA to further T & E. See Jenkins v. Morris Township School District, 58 NJ 483 (1971).

III. PETITIONERS HAVE A LIKELIHOOD OF PREVAILING ON THE MERITS OF THE UNDERLYING CLAIM BECAUSE STATE FISCAL MONITORS HAVE VIRTUALLY CONTROLLED DISTRICT FINANCES FOR YEARS, ONE HAS ADMITTED THAT THE PROBLEM IS REVENUE AND NOT SPENDING, DEFICITS CONTINUE TO GROW, WHILE COURSES, CURRICULUM AND TEACHING POSITIONS ARE CUT.

Petitioners incorporate the arguments presented in their motion for summary judgment. Petitioners update the pertinent facts at the beginning of this brief and introduce more recent public data in support of their position in the exhibits to this motion.

The amended petition alleged that the district does not provide its students with adequate special education and Limited English Proficiency support (Amended Petition, paragraphs 18-22,

hereafter AP:18-22), its teachers with in-house curriculum supervisors (AP:26), closed down its industrial arts program (AP:28), decimated its rich curriculum (AP: 29) and maintains oversized classes (AP:31). Now class sizes are going to be even bigger.

The Taxpayers' Guide to Educational Spending compiled in Exhibit 10, at first blush, seems to show that Lakewood is spending substantially more on its students than other districts. The total spending per pupil is \$24,305, higher than most other urban districts and higher than the state average for large districts at \$19,470. This notion, however, is dispelled by the Budgetary Comparative Per Pupil Cost, which is \$12,348 for Lakewood while the state average is \$15,144. Then, when one locates the true amount that reaches students, classroom spending, a different story is told. Total Classroom Instruction Cost Per Pupil in Lakewood is \$6,600. The state average is \$8,942. As mentioned, 87.93% (FY 2015), 90.96% (FY2016), 86.99% (FY 2017) and 75.06% (FY 2018) of Lakewood students are classified as at-risk or low-income. Districts surrounding Lakewood in all four directions, each with substantially less than 40% of students at-risk ("ENC\_LIRT," Exhibit 8, E60), spend at least 16% more per pupil: Brick \$8,438, Howell \$9,041, Jackson \$7,989, and Toms River Regional \$7,631. Lakewood is ranked as the

lowest spending district of 103 New Jersey K-12 districts with 3500 students or more.

Classroom supplies are the lowest in the state. Legal expense per pupil, due to expensive litigation over implementation of IEPs (hence the large number of children sent to schools for the handicapped) is the highest in the state. Teacher pay is the lowest in the state.

Petitioners will bring expert testimony correlating the decimation of the curriculum and the drain on the budget with Lakewood's low test scores over the last decade. Petitioners will offer expert testimony that the current population of Lakewood is 110,000 to 120,000. The students of Lakewood, living in one of the largest municipalities in New Jersey and one of the lowest in income, have all the needs and disadvantages of other low-income urban areas.

Students in lower income districts require more funding and resources than students in the average New Jersey district. "If the educational fare of the seriously disadvantaged student is the same as the 'regular education' given to the advantaged student, those serious disadvantages will not be addressed, and students in the poorer urban districts will simply not be able to compete." "Abbott by Abbott v. Burke, 119 N.J. 287, 374 (N.J., 1990).

The irrationality of Lakewood funding has led to such dismal underachievement and failure to prepare students for post-secondary education that the constitutional standard of providing T & E was not being met before the current crisis. The evidence before the Court of lack of funding in Lakewood and the resulting underachievement point to the conclusion that the State has failed to provide the constitutionally required system of thorough and efficient public schools in Lakewood.

IV. WHEN THE EQUITIES AND INTERESTS OF THE PARTIES ARE BALANCED, PETITIONERS WILL SUFFER GREATER HARM THAN THE RESPONDENT WILL SUFFER IF THE REQUESTED RELIEF IS NOT GRANTED BECAUSE RESPONDENTS ARE RESPONSIBLE TO MAINTAIN THE PUBLIC SCHOOLS AND PREVENT THEIR ATTRITION, AND PETITIONERS ARE INNOCENT.

Education is priceless. No amount of money can replace the harm to Petitioners should relief not be granted. The loss of experienced teachers and the larger class sizes will cause irreparable damage to the district's students. These students have only one chance to get a high school education. If the state fails to provide them with a thorough and efficient education, they will either drop out of school, or graduate below the necessary standard.

On the other hand, the State is obligated by statute to provide Lakewood with \$24,398,681 in equalization aid. The Respondent cannot complain of harm in fulfilling its statutory and constitutional duty. The State has known about and done little to



improve the prospects of Lakewood public school students for years. It removed Lakewood from the DFG rating in 2003 assuming that Lakewood because of its large number of nonpublic students (70% of whom are low-income). It determined that Lakewood had wealth because the ratio of property value to the number of students (6,000) was higher than in other urban districts. The state ignored the fact that the same families living in the public schools tax base has to support the 27,000 additional children on their own. The state also ignored that the town is one of the lowest income in the state. And most pertinent to the issue at bar, by ignoring the existence of the 27,000 children, the state failed to account for an unprecedented drain on the public schools, a drain that now consumes almost half of the budget. The equities clearly balance on the side of the kids.

#### CONCLUSION

It has been almost three years since Petitioners brought their petition. Petitioners will create a record of constitutional deprivation so that the commissioner may recommend the legislature the correction of the adequacy formula as applied to Lakewood. In the interim, given the huge crisis now facing the district, Petitioners respectfully

request that the state fully fund the SFRA to save the school year before it is lost.

Respectfully Submitted,

*/s/ Arthur H. Lang*

Arthur H. Lang

May 10, 2017



I, Laura Winters, of full age, certify as follows:

1. I am the Superintendent of the Lakewood School District.

2. The Lakewood School District is unable to provide its students with a "thorough and efficient" education required by the New Jersey State Constitution.

3. The level of education that will be offered to the students of the Lakewood School District in the 2017-2018 school year, is in my professional opinion, tragically inadequate and inferior compared to the education offered to students in other New Jersey districts.

4. Each year, the nonpublic school population has grown by about 2,500 students.

5. Currently, there are about 37,000 K-12 students in Lakewood the majority of which are mandated transportation services that will cost the district \$27,387,442 in the next school year.

6. The cost of tuition primarily providing FAPE to the most severely handicapped children in this population will cost the district \$34,434,433.

7. The district does not have the facilities to serve the most severely handicapped children in-house pursuant to their IEPs.

8. These expenses are mandated by law and cannot be avoided.

9. The New Jersey Department of Education has failed to adequately address these disproportionate expenses in its

determination of funding Lakewood.

10. The problem has been ongoing for several years but has now reached crisis proportions due to:

a) The absence of a \$5.6 million State Aid Advance/Revenue that was made because of last year's shortfall.

b) Repayment installment for the above advance.

c) Repayment of a significant federal and state audit refunds which had been deferred in past years for \$1,099,531.

d) The tuition for a newly approved charter school for \$2,128,493.

e) The consortium's bussing cost for the increase in mandated nonpublic school students despite flat funding in State Transportation Aid and overall State Aid for the District for \$1,895,728.

f) Increase in Health Benefits for \$2,821,605

g) Increase in Salaries for \$2,561,333

h) Increase in Tuition for \$525,357

i) Increase to School Base Budget to Title 1 Reduction for \$735,045

j) Increases in the transportation expense less salaries and LSTA for \$686,793.

k) Net Changes to the Balance of the Budget for \$10,692

11. The district will need another \$15,000,000 in order to provide the level of education it provided last year.

12. Without the additional \$15 million, the Lakewood School District will be losing approximately 119 members of its certified teaching staff.

13. The teaching staff cuts will create average class sizes of 50 (K-12).

14. Students throughout the district will no longer have the opportunity to participate in sports programs or after-school clubs and activities.

15. Summer Bridge programs that have helped our students' transition from Elementary School to Middle School and from Middle School to High School will be eliminated.

16. Lakewood High School's summer school program will be abolished, leaving disadvantaged students unable to make-up course credits, in order to obtain their high school diploma.

17. In a district with few administrators, and close to 50 students in a class, there will no longer be guidance counselors in the Elementary Schools to assist those students who struggle with behavioral and emotional problems associated with children being raised in poverty. Research shows that poverty in childhood and adolescence is associated with a higher risk for poor cognitive and academic outcomes, lower school attendance, lower reading and math test scores, increased distractibility, and higher rates of grade failure and early high school dropout.

18. Lakewood School District's Response-to-Intervention

Program, (K-2 students) has been eliminated.

19. All of the district's Media Specialists have been eliminated.

20. Mathematics and Literacy Coaching positions have been abolished, leaving our teachers with limited access to professional development and support.

21. As if the staffing issues are not enough, teachers and students will also have to grapple with having to do more with less, as \$500,000 in educational supplies was also cut from the budget.

22. I feel it is important to note that courtesy busing is not part of the 2017-2018 Lakewood School District budget.

I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the foregoing statements made by me are true.

  
\_\_\_\_\_  
Laura Winters

Dated: May 10, 2017

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LEONOR ALCANTARA, individually and as	)	
Guardian ad Litem for E.A.; LESLIE	)	
JOHNSON, individually and as Guardian	)	
ad Litem for D.J.; JUANA PEREZ,	)	
individually and as Guardian ad Litem	)	
for Y.P.; TATIANA ESCOBAR	)	
individually; and IRA SCHULMAN,	)	
individually and as Guardian ad Litem	)	OAL DOCKET No:
for A.S.	)	EDU 11069-2014S
	)	
Petitioners,	)	
	)	Agency Ref. No.:
v.	)	156-6/14
	)	
DAVID HESPE, COMMISSIONER OF THE NEW	)	
JERSEY DEPARTMENT OF EDUCATION; the	)	
NEW JERSEY STATE BOARD OF EDUCATION;	)	
and the NEW JERSEY DEPARTMENT OF	)	
EDUCATION	)	
	)	
Respondents.	)	
	)	
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CERTIFICATION OF MARCY MARSHALL IN SUPPORT OF MOTION FOR  
EMERGENCY RELIEF

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 NJ Att. No. 014102010  
 918 East Kennedy Blvd.  
 Lakewood, NJ 08701  
 (732) 609-5530  
 lakewoodlaw@gmail.com  
 -and-  
 Daniel Louis Grossman

Attorneys for Petitioners



I, Marcy Marshall, of full age, certify as follows:

1. I am the Principal of the Lakewood High School.


2. I am familiar with the identity of D.J., the child of Petitioner Leslie Johnson, and certify that she is currently enrolled in Lakewood High School.

3. I am familiar with the identity of J.P., the child of Petitioner Juana Perez, and certify that she is currently enrolled in Lakewood High School.

4. I am familiar with the identity of I.G.M, the brother of Petitioner Maximo Galeana, and certify that I.G.M is currently enrolled in Lakewood High School.

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I certify that the forgoing statements are true to the best of my knowledge. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

  
Marcy Marshall

Dated: May 10, 2017