

PAULL TRACTENBERG
ATTORNEY-AT-LAW & LEGAL CONSULTANT
123 WASHINGTON STREET
NEWARK, NJ 07102
973-353-5433
PAULLTRACTENBERG@GMAIL.COM

March 28, 2018

Governor Philip D. Murphy
PO Box 001
Trenton, NJ 08625

Attorney General Gurbir Grewal
Department of Law and Public Safety
PO Box 080
Trenton, NJ 08625-0080

Acting Commissioner of Education Dr. Lamont Repollet
Department of Education
PO Box 500
Trenton, NJ 08625

Re: The State's urgent responsibility to attend to the desperate financial circumstances of the
Lakewood School District

Dear Governor Murphy, Attorney General Grewal and Acting Commissioner of Education
Repollet:

You undoubtedly already know about the Lakewood school district's desperate financial circumstances since this past Thursday evening its board of education adopted a budget resolution that included a request for a State Aid Advance of \$28,182,090 to cover a huge projected budget deficit for 2018-19. Deficits, and "emergency loans" from the state to partly cover those deficits, have been an annual occurrence for several years. The situation is worsening not improving, however, and the state's "loans" recognize both Lakewood's need and the state's responsibility to meet it. As the two state fiscal monitors, who have been assigned to the Lakewood school district for several years, have testified to publicly, Lakewood's problem is a revenue problem, not a spending problem. It simply doesn't have enough funding to operate its schools in a constitutionally compliant manner, no matter how economical it is.

I write from a special perspective relating to the state's longstanding and well-established constitutional obligation to assure that all New Jersey students have the opportunity to receive a "thorough and efficient" education. The need is especially acute for students such as Lakewood's almost 6,000 predominantly Hispanic and low-income students, and adequate funding is a crucial component of the state's obligation. There has been strong and crystal clear constitutional

jurisprudence for at least 45 years that, although the state can delegate some educational functions to local school districts, the ultimate responsibility for assuring a thorough and efficient education for all New Jersey students is the state's and, if any district is unable to assure that result, the state must step in.

Lakewood's fiscal problem is not a function of the state's general school funding formula contained in the School Funding Reform Act of 2008 (SFRA), and relatively minor adjustments to that formula will not meet Lakewood's needs. Rather, Lakewood's fiscal problem grows out of its unique demographic makeup and the state must meet Lakewood's special needs head on. As you should know, Lakewood has approximately 37,000 school-aged children in residence, only about 6,000 of whom, or about 16%, attend the public schools. This is the inverse of most of the state's school districts where, on average, about 90% of the students attend public schools.

The Lakewood district's budget is charged with the special education and transportation costs of those 31,000 nonpublic school students, which results in about 40% of the school district budget being unavailable to public school students. That means Lakewood is able to spend on its educationally needy public school population between 35 and 40% less than what SFRA's most important metric, the "adequacy budget," requires. By itself, that seems to provide prima facie evidence that Lakewood students are being denied their right to a constitutional education and that the state has a responsibility to act immediately.

As you may also know, a petition was filed with the commissioner of education in June 2014 on behalf of Lakewood's public school students arguing that their district's actual public school spending level, after the deduction of charges for nonpublic school students, denied those students their constitutional education rights. The petition was assigned to the Office of Administrative Law shortly after its filing and has been there ever since (Leonor Alcantara, et al. v. David Hespe, et al., OAL Docket No. EDU 11069-2014 S. Agency Ref. No. 156-6/14).

I have been a "participant" (the OAL equivalent of a "friend of the court") in the matter for about three years. During that time, my submissions to the administrative law judges (there have been three in sequence and the current one is retiring effective March 31, 2018, just a few days from now) have stressed that if ever there was a case where "time was of the essence" it is this one. Every day that Lakewood public school students receive an education that is manifestly below constitutional requirements, it is a day lost to them forever. The harm they suffer is truly irreparable.

And yet they have suffered through about 750 of those school days just since the petition was filed with the commissioner. Perhaps it would be tempting for you to respond to this letter by saying that we should just let justice take its course, however long that might take, but I doubt that would be a response that Lakewood's public school students and their parents would find acceptable. Moreover, as a participant in this matter I know how long the process has taken already and why it has taken so long. In my opinion, much of the time expended has been a result of tactics by lawyers for the state respondents, which have succeeded only in delaying matters, not changing or improving the course of the litigation. To be frank, under the Christie administration I was not surprised by those delaying tactics, but under the Murphy administration I would be surprised and deeply disappointed if they were to continue.

If this matter is allowed to run its course, without emergent action, it will take years more—and the administrative law judge (ALJ) just denied the petitioners’ motion for emergent relief. After all, the ALJ only proffers a recommended decision to the agency head, who in this case is the commissioner of education, the named respondent. Whatever the result of the administrative process, the matter is likely to wind up in the state courts, first in the Appellate Division and ultimately in the Supreme Court. We know from many cases, including *Abbott v. Burke*, how long that can take

The irony is that, with the benefit of hindsight, I find myself wondering whether this litigation in which I have been actively participating for three years should even have been required (other than as political cover or because the Christie administration was unlikely to act on its own to remedy the problem). After all, the commissioner of education has long-standing and well-established power and duty to take whatever action is required to assure that students receive a thorough and efficient education. The commissioner, in tandem with his executive county superintendent who has to approve the district budget every year and his two fiscal monitors who are on the ground in Lakewood, is almost certainly better equipped than an administrative law judge to assess whether Lakewood has insufficient funding to enable it to provide its students with a thorough and efficient education.

That is especially true here where most of the relevant fiscal, demographic and educational data come from the Department of Education’s own website or other widely available public sources. Perhaps legislative action might be required to appropriate sufficient funds to meet Lakewood’s unique needs now and into the future, but that, in combination with forthright and long overdue action by the executive branch, should be sufficient. Of course, if I can be of any assistance to either the executive or legislative branch in their effort to finally remedy the plight of Lakewood’s public school; students, I would be pleased to do so.

This is one case where the judicial branch should be able to remain on the sidelines, though. After all, difficult as it is for me as a longtime legal advocate to admit, perhaps not every important and urgent issue in New Jersey has to wind up on the court’s doorstep.

Sincerely yours,

Paul L. Tractenberg

cc: Matt Platker, Esq., Chief Counsel to the Governor
Arthur H. Lang, Esq. and Daniel Grossman, Esq., attorneys for petitioners in the Alcantara case
Geoffrey N. Stark, Esq., Jennifer Hoff, Esq. and Lori Prapas, Esq., attorneys for respondents in the Alcantara case

Michael I. Inzelbuch, Esq., attorney for participant Lakewood Board of Education in the
Alcantara case