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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, at this past Thursday evening's meeting, 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. Of course, the state fiscal monitors have an

ongoing responsibility to assure that the district is spending available funds as economically as possible.

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 neither relatively minor adjustments to that formula nor ad hoc "emergency loans" will 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 also may know, a petition was filed with the commissioner of education in June 2014, almost four years ago, 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 (Léonor Alcántara, 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 this week) 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.

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 have personally experienced the frustration of how long the process has taken already and I have a good idea 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. Indeed, difficult as it is to believe, during this almost four-year long administrative process, the state actually never has submitted an answer to the students' petition.

The delays occasioned by the tactics of the state's lawyers has been compounded by lengthy delays in the administrative process and a seeming unwillingness or inability of the administrative law judges involved to expeditiously develop a record in this matter that would inform further administrative and judicial consideration.

As just one example of the failure of the state's administrative process to deal expeditiously with this matter, ALJ John Kennedy took almost a year to rule on a motion to dismiss the petition filed by the state at the very start of the process, and then, ironically, he resoundingly ruled against the state. That was in July 2015; nonetheless, a hearing on the petition didn't begin until February 2018. And now the state has moved yet again to dismiss the petition before the hearing has been completed.

To be frank, under the Christie administration I was not surprised by those delaying tactics and behaviors, 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 (and the ALJ just denied the petitioners' motion for emergent relief without even receiving a legal brief from the state's lawyers), it will take years more. 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 happens in the administrative process, if the litigation skein is played out, the matter will 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* in which I have been deeply involved, 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 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 coming cold

to this matter 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. For the sake of Lakewood's public school students, please step in immediately to rectify the state's longstanding failure to protect their constitutional rights before it simply is too late for them.

Sincerely yours,

Paul L. Tractenberg

cc: Matt Platkin, Esq., Chief Counsel to the Governor
Arthur H. Lang, Esq. and Daniel Grossman, Esq., attorneys for petitioners in the Alcantara case
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Michael I. Inzelbuch, Esq., attorney for participant Lakewood Board of Education in the Alcantara case