SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION

Docket No. A002493-23

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 for A.S.
Petitioners,
v.

ANGELICA ALLEN-MCMILLAN, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF EDUCATION; the NEW JERSEY STATE BOARD OF EDUCATION; and the NEW JERSEY DEPARTMENT OF EDUCATION
Respondents.

ON APPEAL FROM A FINAL DECISION OF THE ASSISTANT COMMISSIONER OF EDUCATION

AGENCY REF. NO.: 156-6/14

OAL DOCKET NO. EDU 11069-2014S

SAT BELOW: HONORABLE SUSAN A. SCAROLA, ALJ

ON REMAND TO THE COMMISSIONER OF EDUCATION A-003693-20

APPELLANTS' REPLY BRIEF

Paul L. Tractenberg, Esq.
123 Washington Street
Newark NJ 07102
973-879-9201
paulltractenberg@gmail.com
Attorney for Petitioners
NJ Att. No. 024721975

Arthur H. Lang, Esq.
918 East Kennedy Boulevard
Lakewood, NJ 08701
732-609-5530
lakewoodlaw@gmail.com
Attorney for Petitioners
NJ Att. No. 014102012

TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Final Decision on the remand, Commissioner of Education, April 1, 2024.

TABLE OF AUTHORITIES

Statutes:

Case Law:

PRELIMINARY STATEMENT

We decided to file this reply brief even though we believe that our prior brief stands largely unaddressed and unrebutted by the State's brief. We are doing so to point out and stress that the State's brief is more notable for **what it does not say** than for **what it does say**. As a result, our reply brief's Argument focuses only on the few points the State's brief addresses and includes other points only as place holders for the arguments we made in our prior brief. We see no point in burdening this court with arguments previously made adequately and unrebutted by the State's brief.

- **What the State's brief primarily says** can be set forth simply. It says, repetitively and without legal basis, that the conceded denial of a thorough and efficient education (T&E) to the Lakewood School District's (LSD) public school students, which it acknowledges continues to the present time, is caused by myriad unchecked failures of the local school district and that the School Funding Reform Act (SFRA), the State's primary vehicle for funding the public schools, is not even a significant cause of the denial.
- **What it does not say** is that for more than 50 years it has been a core constitutional principle in New Jersey that it is the State, not local

districts, that has ultimate responsibility for assuring T&E, and that the State has whatever power is required to discharge that high constitutional duty.

- **What it does not say**, in dereliction of its duty to respond to this court's express remand order, is that the real cause of the denial is the failure of SFRA, the State's chosen vehicle for directing funding to school districts, to provide the LSD with sufficient T&E appropriate funds over many years. This is the argument appellants have made ever since this case was filed more than 10 years ago and it has never provoked an honest, fact-based and persuasive response from the State.
- **What it does not say** is that the State's implementation of SFRA has fallen unconstitutionally short regarding two explicit conditions that the New Jersey Supreme Court established 15 years ago in *Abbott XX* — namely, full funding every year and periodic evaluation of whether SFRA is working adequately for every district given its particular circumstances, and, if it is not, what statutory or other adjustments are necessary. Indeed, the State's brief acknowledges that the SFRA funding formula was not even in effect between FY 2010 and FY 2017, virtually half of SFRA's entire life span, because school funding during those eight fiscal years was

"calculated based on provisions included in the State budget, with underlying funding policy changing every year." [State Brief (SB) at 6].

- **What it does not say** is that reliance on annual discretionary advance state aid loans, repayable by LSD within 10 years, has proven to be a manifestly unsuccessful, and arguably unconstitutional, effort to enable the district to keep its schools open; in the words of the Administrative Law Judge (ALJ), who conducted a lengthy hearing in this case, this has created "an unsustainable fiscal situation" in the district and effectively functions as a "Ponzi scheme."
- **What it does not say** in any meaningful way is what the State will be doing to remedy the acknowledged denial of T&E to Lakewood students beyond more of the same— presumably more repayable advanced state aid loans on top of the $215 million already burdening the LSD, a "new state monitor," presumably to replace the multiple State monitors who have been continuously in place in the district for more than 10 years without, according to the State, any ability to remedy the constitutional denial, and the State's much belated "exploring [of] the degree of oversight and intervention" required of it to "protect the constitutional rights of LPSD's public-school students."

COMBINED STATEMENT OF RECENT PROCEDURAL HISTORY AND RELEVANT FACTS

This case was filed more than 10 years ago as a contested matter with the New Jersey Department of Education (NJDOE) and was referred to the Office of Administrative Law (OAL), where it remained for almost seven years until Administrative Law Judge (ALJ) Susan Scarola filed a lengthy and detailed initial decision on March 1, 2021. Her decision, and its many findings of fact, were based on a lengthy hearing.

She concluded that LSD public-school students were being denied their fundamental constitutional right to T&E, mainly for fiscal and budgetary reasons, but she nonetheless adopted the State's assorted arguments for why SFRA, the State's primary vehicle for funding the public schools, was not the cause of that denial.

In a brief Final Agency Decision (FAD) on July 16, 2021, the Acting Commissioner (AC) accepted all the ALJ's findings, but rejected the ALJ's conclusion based on those findings that the students had been denied T&E. Because the AC found no T&E violation, she did not address SFRA's constitutionality as applied to LSD. She did, however, recognize that the LSD

had significant educational problems and ordered NJDOE to conduct a comprehensive review of the district.

The AC's FAD resulted in an appeal as of right to this court by the student-appellants and a unanimous decision on March 6, 2023, overturning the AC's FAD regarding T&E. Because the AC had not addressed SFRA's constitutionality as applied to LSD, this court decided to remand the case to the AC for her to "consider the substantive arguments pertaining to the SFRA in light of our Supreme Court's directive in Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 146 (2009)." Alcantara v. Allen-McMillan, 475 N.J. Super. 58, 71 (App.Div. 2023). This court also chose not to retain jurisdiction, presumably expecting the AC to respond promptly and fully to the remand order as she was legally obliged to do.

Earlier in its opinion, this court described the AC's remand responsibilities as follows: "The Commissioner owed appellants a thorough review of their substantive argument: the funding structure of the SFRA was unconstitutional as applied to Lakewood's unique demographic situation." [Id. at 67].

Soon thereafter, the student-appellants began pressing the AC for a

schedule of how she was going to comply with the remand order. That led to a March 12, 2023, letter to the student-appellants' lawyers stating that the comprehensive review by NJDOE ordered on July 16, 2021, but apparently never started, would be "expedited." She did not, however, provide a schedule for how she would be complying with the court's remand order.

As the remand period dragged on for months without apparent action by the AC or the NJDOE, the student-appellants tried various formal and informal means of expediting the process, but none bore fruit. Finally, on October 23, 2023, student-petitioners filed a motion in aid of litigants' rights with this court, which the court granted on November 27, 2023. That consisted of an order that the AC submit the FAD on the remand by April 1, 2024.

The comprehensive review, conducted mainly by a highly paid educational consulting firm based in Boston without apparent expertise in school finance, statutory analysis or state constitutional law, was submitted to the appellants and to LSD on March 1, 2024, exactly three years after the ALJ's initial decision was issued. The appellants responded with a letter brief to the AC on March 6, 2024, and the LSD submitted a lengthy and detailed rebuttal of the State consultants' report by their own educational consultant on May 6, 2024.

As appellants had warned repeatedly in advance, the State consultants' report did not seem to provide the AC with a basis for responding to the court's explicit remand order. When the AC's FAD was issued on the appointed date of April 1, 2024, that concern became manifest. Neither the consultants' lengthy report, nor the AC's FAD—nor for that matter the State's Brief responding to appellants' brief--reflected any serious attempt to respond to this court's remand order. They all focused almost exclusively on the perceived failures of the local district and managed to ignore any failures of SFRA.

ARGUMENT

SINCE THE COMMISSIONER OF EDUCATION HAS FAILED TO RESPOND ADEQUATELY TO THIS COURT'S REMAND ORDER, AND THE STATE'S BRIEF HAS FAILED TO RESPOND TO THE RELATED CONSTITUTIONAL ARGUMENTS PRESENTED BY THE APPELLANTS IN THEIR BRIEF TO THIS COURT SUPPORTING THEIR APPEAL, THE COURT SHOULD RULE NOW ON THE CONSTITUTIONAL QUESTION IT POSED OF WHETHER THE DENIAL OF T&E TO LSD PUBLIC-SCHOOL STUDENTS WAS A RESULT OF SFRA'S UNCONSTITUTIONALITY AS APPLIED TO THE DISTRICT

As appellants argued in our prior brief to this court, the AC was legally obliged to respond to the court's remand order in precisely the manner delineated. Neither the AC's FAD nor the Respondents' Brief in Opposition to the Appeal, submitted by the respondents' lawyers in the New Jersey Office of the Attorney General (NJOAG) on August 2, 2024, did so. Nor did either respond to the related constitutional arguments presented by the appellants on appeal.

At a minimum, the State's brief should have dealt in a serious substantive manner with three matters:

1. This court's explicit remand order to respond to the appellant's legal argument that the denial of T&E to LSD students was caused by SFRA;
2. The argument in the appellants' brief supporting this appeal that the State, not local districts, has ultimate responsibility for assuring that the students receive T&E; and
3. The explicit constitutional condition in *Abbott XX* that SFRA's constitutionality as applied is dependent upon its being periodically evaluated to determine whether it needs to be modified, based on the lived experience of all districts and students, to assure that they are actually receiving T&E.

Inexplicably, the State's brief addresses none of those matters. That leaves a gaping void that this court can and must fill by rendering a decision on the constitutionality of SFRA as applied to LSD.

As to responding to this court's remand order, the AC failed in his FAD to meaningfully address this court's explicit remand question—essentially a legal and statutory question—about the extent to which SFRA caused the denial of T&E.

We had warned about that impending failure early and often as soon as the AC announced his plan to base his response to this court's remand order on having highly paid consultants hired by the State, who lacked any expertise in school funding laws, statutory analysis and law, carry out a comprehensive review of the LSD. And the State got what it paid for—a long, detailed report focused on the alleged inadequacies of the district's educational management and dealing not at all with SFRA's application to LSD and adequacy to meet the educational needs of LSD students.

The State's brief underscored, even worsened, the State's default. That is inexplicable since the respondents' lawyer, the NJOAG, surely has the capability to evaluate a statute and its implementation and to make legal judgments about their sufficiency. Unfortunately, the State's brief provides no

meaningful indication that the NJOAG was any more willing to address this court's explicit remand question than the AC's FAD.

Instead, the brief's Argument section consists overwhelmingly of a rehash of the brief's over-long section on Procedural History and Counterstatement of Facts. The Argument's three sub-heads make clear and explicit the bases of the State's argument that SFRA is constitutional as applied to LSD ("A. The **District's** Ineffective Policies and Extreme Mismanagement Are a Root Cause [sic] of Its Inability to Provide T&E;" "B. The District Has Failed to Take Steps to Reduce Its Special Education Costs;" and "C. The District Has Severely Mismanaged Its Transportation Responsibilities, Resulting in Inflated Costs").

The State's brief does not include any reference to how SFRA is working in practice for LSD, a district that everyone, including this court, has recognized is emographically unique. This is at the very core of this court's remand order.

The State's brief does not seek to explain why the State has rarely, if ever,[1] used its extensive powers to require LSD over the past 15 years to implement the reforms that the State now claims are obvious and could have solved all the district's fiscal and educational problems.[2]

[1] The State's brief refers in passing to the state monitors requiring the district—in 2014--to increase their local taxation and the district complying. SB at 8 and 39. Otherwise, the brief refers to State "suggestions" and an unquantified amount of money the district could have saved over the years had it implemented those "suggestions."

[2] A recent Interim Decision and Order by the New York State Commissioner of Education, involving a district similar to LSD, demonstrates how a State's education leader can exercise her power to vindicate the rights of students by ordering a district to act. Appeal of Ana Maeda from Action of the Board of Education of the East Ramapo Central School District (July 31, 2024).

The State's brief does not respond to the appellants' argument that annual discretionary and repayable advance state aid loans cannot constitute "additional aid" for T&E [SB at 33] because: (i) they simply don't constitute "aid" i n a meaningful sense since they are supposed to be repaid by the district out of future state aid; and (ii) they do not meet the New Jersey Supreme Court's clear and repeated standards for T&E funding [*see, e.g.* , N.J.S.A. 18A:7F-44 (q), ("A predictable, transparent school funding formula is essential."); see also, Abbott XX, 199 N.J. at 21 ("[T]ransparency . .. enables stakeholders to determine readily the basis for funding outcomes....predictability enables districts . . . to plan and implement programs more effectively.") ; *see also,* Abbott II, 119 N.J. 287, 385) (1990), ("Funding must be certain, every year."); *see also,* Abbott III, 136 N.J. 444, 448 (1994), (Funding "without depending on the discretionary actions of officials."). Nor does the State's brief mention, let alone respond to, the ALJ's references to the loans as having created an "unsustainable fiscal situation" in LSD [ALJ at 66], or as being a "Ponzi Scheme" [July 9, 2019, 12 T 109-2 to -5].

The State consultants' report, on which the State's brief relies so heavily, could be read to suggest that the $215 million in loans already extended to LSD were necessary only because of the district's alleged gross inefficiencies and mismanagement. But nowhere in the report or brief is there a suggestion of how much money the district could have saved, if any, by implementing the

consultants' recommended reforms. Nor does the State's brief respond to appellants' argument that excessive reliance on loans to support a district's ongoing educational program can itself constitute a T&E violation.

Thus, the State's position, without support in the ALJ's detailed findings or in anything else of probative weight, seems to be that:

- SFRA by itself provides LSD with enough funding to provide its students with T&E[3];
- The $215 million in repayable advance state aid loans, provided to LSD over the past 10 years, has only been necessitated by LSD's refusal to raise more local taxes; and
- The district is ultimately responsible for those failures and the State has no authority to require that corrective action be taken—it is only a powerless bystander whose role is to make suggestions.[4]

As to the last point, it is only in the very last paragraph of the State's brief that it seems to take a different tack.

[3] This is at odds with the language of the Commissioner's annual certifications to the State Treasurer, which underlay the advance state aid loans, to the effect that without such loans the district would have insufficient funds to provide T&E. [N.J.S.A. 18A:7A-56].

[4] A careful review of the State's brief produced only one reference to the State **requiring** the LPSD to take any action—the monitor's requirement in 2014 that the District "increase its tax levy up to the maximum amount," a requirement that the District satisfied. [SB at 8 and 39]. Otherwise, the State's brief refers multiple times to "recommendations," "warnings," "suggestions," and "recognition" by the State to LPSD [*see, e.g.*, SB at 2, 6, 7, 8, 29, 40 and 42]. The LPSD did respond to one of those non-requirements—the elimination of courtesy busing, but the State's brief even criticized that by stating that, although the District responded, it did not do so "with any sense of urgency." [SB at 7].

> Irrespective of this appeal, the Department recognizes the State's constitutional duty to address the lack of T&E in the District, and... to take steps to remedy that situation. [SB at 49].

The State's brief describes these "steps" as including:

- "ensuring the District has sufficient funds to meet its **immediate** needs;"
- "moving to install a **new** State monitor;" and
- "**exploring** the degree of oversight and intervention [by the Department?] that **may be necessary** to protect the constitutional rights of LPSD's public-school students." [Id. (Emphasis added.].

As to the first step, the reference to meeting the District's "immediate needs" seems to suggest continuation of the annual discretionary advance state aid loans or short-term legislative fixes rather than a substantial ongoing modification of SFRA's formula.

As to the second step, the State's brief fails to explain why a "new" State monitor will be more effective than the 10-year succession of multiple State monitors placed in the LSD (at an outlay of more than $2 million by the **district**). In a final footnote to its brief [SB 49, n.13], the State seeks to explain the ineffectiveness of the prior and present State monitors, but not why a new State monitor could be more effective. In an obvious throwing up of the hands,

suggesting that installing a new State monitor is a kind of bureaucratic Hail Mary, the footnote ends by stating that "Regardless of what past monitors did or did not know, the Department will be installing a new monitor." [Id.]

As to the third step, the State really needs to explain and justify why in 2024, more than 15 years after the LPSD's problems resulted in a State-ordered needs assessment and more than 10 years after this case was filed on behalf of LPSD public-school students complaining of the denial of T&E, the State is just "**exploring** the degree of oversight and intervention that **may be necessary** to protect the constitutional rights of LPSD's public-school students." [Id. at 49 (Emphasis added.)].

A careful review of the State's brief indicates that only four of its 49-page total, and only four of its 21-page Argument deal with legal argumentation. The main legal discussion relates to the appellants' argument that this court might shift to the State the burden of proving that SFRA is constitutional as applied to LSD because the Lakewood public school students have joined the Abbott/SDA students as the only ones in the state to have been definitively adjudicated as being denied their fundamental constitutional rights to T&E.

This is hardly a do-or-die point—although we believe that our position

and not the State's, is the sounder one.[5] Even if the usual burden were placed on the student-appellants—to prove SFRA's unconstitutionality as applied by "a preponderance of the believable evidence [Abbott v. Burke, EDU5581-85 (initial decision), August 24, 1988]—we believe that appellants have easily met that burden.

Even as to that point, the best the State's brief can do is to assert that, according to the New Jersey Supreme Court in Abbott XX, SFRA "is **designed** to achieve a thorough and efficient education for every child, regardless of where he or she lives." Abbott v. Burke (Abbott XX)199 N.J. 140, 175 (2009) (Emphasis added.).

Such a statement might support a holding that a statute is constitutional **on its face**, but not that it is constitutional **as applied**. To conclude that it is constitutional as applied, the court must conclude that its "effect," not just its "design," is constitutionally sufficient.

The State doesn't establish that, or even try to do so in a serious and substantive manner. Therefore, any boiler plate presumption of

[5] The State's main effort to distinguish the situation of LSD students from those in the Abbott/SDA districts is by arguing that LSD students don't suffer from "the same municipal overburden common to SDA districts" [SB at 31]. The State does not seem to recognize that LSD students suffer from a different, and quite likely much greater, form of "overburden." As the ALJ found, and this court accepted, LSD students suffer from the unique fiscal burden of costs for tens of thousands of nonpublic school students that consume more than half of the entire public school district budget [Alcantara, 475 N.J.Super. at 62-63].

constitutionality of a statute must give way to its actual impact on the students of LSD. We know that to be a denial of T&E and the State's effort to attribute that solely to local failures falls far short of the mark.[6]

Indeed, the State's brief cites, with apparent approval, a "familiar standard for as-applied constitutional challenges" that seems to mirror our position—"[w]hether a statute passes a constitutional challenge 'as-applied' to any individual school district at any particular time must be determined only in the factual context presented and in the light of circumstances as they appear." [Abbott XX, 195 N.J. at 235 (citing Robinson v. Cahill,[7] 69 N.J. 449, 455 (1976)].

This standard is consistent with the appellants' view and with our arguments throughout the 10-year history of this litigation. Unfortunately, although the State now cites it with approval, it is inconsistent with how the

[6] To the extent that the State asserts one of LSD's failures relative to T&E is its failure to raise more local tax revenue to help to support its public schools, there are three answers: (i) state statutes both cap a district's capacity to increase local taxes and explicitly preclude some increases in local taxation from being used for T&E purposes; (ii) the only time that the State, through its State monitors in 2014, required LSD to increase local tax revenue, the district complied—otherwise the most the State did was to "suggest" that LSD consider increasing its local taxes; and (iii) the capacity of Lakewood to increase its local taxes, even to the level of its LFS, is unclear since it is regularly listed as one of New Jersey's poorest municipalities, with the highest percentage of residents living in poverty, more than 39%. As to the last point, see https://www.app.com/story/news/local/2024/07/14/new-jersey-most-least-livable-small-cities-ranking-smart-asset/74381963007/.

[7] This is the only reference in the State's brief to Robinson v. Cahill, proof positive that the State has totally ignored our argument about the State having ultimate responsibility for T&E, which derives from the first New Jersey Supreme Court opinion in Robinson in April 1973 and has been a core principle of the State's jurisprudence ever since. Robinson v. Cahill, 62 N.J. 473 (1973).

State has litigated this case and with its latest brief.

From this court's perspective, the AC's April 1, 2024, FAD and the State's Brief in Opposition to the student-appellants' appeal constitute a bad news-good news scenario.

The bad news is that the State's response to your remand offer, both as manifested in the AC's FAD and in the State's latest brief, provides you with little help in deciding the central question of whether SFRA is unconstitutional as applied to LSD and its demonstrably unique demographic circumstances.

The good news is that it's not a close question. Although SFRA might still be viewed as "constitutional on its face" because it is based on a laudable "design," its unconstitutionality as applied at least to Lakewood is absolutely clear as both a substantive and procedural matter.

The commissioner's annual certifications to the state treasurer supporting advance state aid loans to Lakewood, now totaling more than $215 million, and certain to increase by ever-growing annual amounts if SFRA's formula is not dramatically altered for Lakewood, demonstrate conclusively SFRA's inadequacies. The fact that to the present time neither of the two constitutional conditions the New Jersey Supreme Court specified in Abbott XX 15 years ago for SFRA's constitutionality as applied, and especially the one

requiring periodic evaluation and adjustment, has been met add to the overwhelming case for unconstitutionality.

Add to that the acknowledgement in the State's brief that for about half of SFRA's life it has not even been the vehicle for the distribution of State aid to districts, including Lakewood, the case for SFRA's unconstitutionality as applied becomes even more overwhelming.

Finally, this court has ample record evidence that supports a decision ruling that both that SFRA is unconstitutional as applied to LSD and that the appropriate remedy is a long overdue legislative amendment to SFRA, or separate legislation dealing with Lakewood's fiscal overburden, or both.

The State monitors assigned to LDS, whom the State's brief goes out of its way to malign, have stated publicly numerous times that the district's problem is a revenue problem not a spending problem. The report of the OLS's Office of State Auditor, and statements from the district's professional auditors and a number of prominent state legislators from the area all attributed LSD's educational problems to SFRA's shortcomings, not local mismanagement, and they join the student-appellants in urging that the statutory funding formula be modified.

As to SFRA-related failures, the State would have this court ignore: (I) the

State's failure to fully fund SFRA every year and periodically adjust it to meet LSD's concededly unique demographics and their enormous drain on the public school budget; and (ii) the Commissioner's annual certifications that have generated hundreds of millions of dollars of repayable loans to LSD, creating an unsustainable fiscal situation, because LSD otherwise would have insufficient funds for T&E (in other word, SFRA doesn't generate enough funding for the LSD to provide T&E).

A. THE COURT SHOULD SET OUT THE REMEDIAL PARAMETERS AND PROVIDE THE EXECUTIVE AND LEGISLATIVE BRANCHES WITH A CONSTITUTIONAL BASIS, AND REASONABLE TIME PERIOD, FOR FULLY REMEDYING THE CONSTITUTIONAL DEFECTS

We simply underscore what we have set out in our prior brief and rely on that Argument point here. This court must couple a constitutional judgment that SFRA is unconstitutional as applied to LSD with remedial instructions that assure the student-appellants' fundamental constitutional rights are vindicated, at long last, as soon as possible.

B.THE COURT SHOULD ACT EXPEDITIOUSLY RECOGNIZING THAT TIME IS OF THE ESSENCE FOR THE STUDENT-APPELLANTS

There is no better way to make this point and conclude this reply brief than by quoting again Justice Albin's eloquent statement in Abbott XXI:

> Children go to school for a finite number of years. They have but one chance to receive a constitutionally adequate education. That right, once lost, cannot be reclaimed. The loss of that right will have irreparable consequences, particularly for the disadvantaged children to whom SFRA was intended to give a fair chance at a thorough and efficient education. Abbott v. Burke (Abbott XXI), 206 N.J. 332, 478 (2011) (Albin, J., concurring opinion).

CONCLUSION

Despite the State's continuing efforts to confuse and complicate matters, this is a straightforward case:

1. The New Jersey Constitution guarantees students T&E;
2. The state is ultimately responsible for assuring that;
3. SFRA is the vehicle the State has chosen to assure that every district has enough funding to guarantee that its students receive T&E;
4. To accomplish this, SFRA has to be fully funded and periodically evaluated and, if need be, adjusted to assure that every district, in respect of its particular circumstances, has enough assured funding for

its students;

5. LSD students are being denied T & E;
6. This court remanded the matter to the Commissioner for one explicit purpose—to consider the students' argument that SFRA was the reason for their denial of T&E;
7. Instead of responding to that judicial mandate, the State has sought to place the blame entirely on the local district in direct contradiction of more than 50 years of New Jersey Supreme Court jurisprudence that the State is ultimately accountable for T&E, and for doing everything necessary to achieve that up to and including assuming operational responsibility for districts that simply can't carry out their delegated responsibilities.

Respectfully submitted,

s/ *Paul L. Tractenberg*

s/ *Arthur H. Lang*

Dated: August 14, 2024