

**School Funding Reform Act of 2008
as Applied to the
Lakewood Township School District**

**Prepared for the Court Re:
Leonor Alcantara et. al. v. David Hespe et. al.**

**Melvin L. Wynn
September 28, 2018**

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Introduction and Background Information

My relationship with the Lakewood Township School District began on July 14, 2003 which was well before the School Funding Reform Act of 2008 (SFRA) was enacted. Initially, I was asked to provide consulting services for the district to assist the board of education in addressing and implementing the findings of its Blue Ribbon Funding Task Force. I attempted to identify the specific problems with the CEIFA¹ formula that were resulting in inadequate educational aid for Lakewood. In this regard I prepared two reports. My first report was issued on September 22, 2003.² I looked at the CEIFA entitlement printouts for the 1998-99 through 2001-2002 school years and very quickly focused on the Core Curriculum Standards Aid formula. Overall aid increased from \$19,526,259 in 1998-99 to \$20,122,964 in 2001-2002; however core curriculum standards aid declined by more than \$3 million from \$7,906,393 in 1998-99 to \$4,244,120 in 2001-2002. By 2001-2002 Lakewood had also qualified for Stabilization Aid of \$1,854,071 which was the sole reason that overall aid increased slightly during this period. Stabilization Aid was the CEIFA aid category that protected school districts from large losses of aid when the implementation of the formulas would otherwise cause such a loss.

CEIFA's Core Curriculum Standards Aid formula was very similar to SFRA's formula. Both formulas calculated a local share which is a function of a district's equalized valuation (property wealth) and its aggregate income. Both of these measures of district wealth are used equally in both formulas. I found that at that time the specific problem for Lakewood was the fact that Lakewood's equalized valuation and aggregate income were both increasing rapidly causing Lakewood to be considered as a wealthier school district under the CEIFA Core Curriculum Standards Aid formula. The increase was more severe for the equalized valuation or property value component of the formula and disproportionate to any change in projected resident enrollment.

My second report was issued on October 20, 2003.³ In this report I discussed a practicable, logical and defensible way of modifying the CEIFA Core Curriculum Standards Aid formula to address the circumstances that were negatively impacting Lakewood. The local share under the CEIFA Core Curriculum Standards Aid formula, as applied to Lakewood, was impacting Lakewood differently than the other large communities in the state and other school districts generally. Both of these reports were provided to officials during a meeting with officials from the Governor's Office and officials from the New Jersey Department of Education, including the Commissioner of Education, that was held on January 23, 2004.⁴ At this meeting Commissioner Librera

¹ The Comprehensive Education Improvement and Financing Act of 1996

² If necessary I can provide a copy of my report to the court.

³ If necessary I can provide a copy of my report to the court.

⁴ If necessary I can provide a copy of the minutes of the meeting to the court.

asked me a question to confirm his understanding of the problem in the wealth components of the core curriculum standards aid formula caused by the exceptionally large nonpublic school enrollment as it was presented and the Commissioner remarked that he readily understood and acknowledged the problem.

Commissioner Librera indicated that he preferred if possible to address Lakewood's concerns administratively/operationally rather than through a separate legislative bill. He indicated that he would direct the county superintendent to discuss the entire matter with the Assistant Commissioner of Finance and other persons within the department's Finance office to determine if there was anything that the department could do administratively to address Lakewood's school funding problem. Afterwards in a debriefing session with the persons from Lakewood I offered that it was unlikely based upon my experience and knowledge that the Department of Education would be able to do anything administratively/operationally within the CEIFA formula to address Lakewood's problem. I also mentioned that budget footnote language was a viable alternative to separate legislation if the McGreevey administration was serious about addressing Lakewood's school funding problem.

In the 2004-2005 fiscal year, perhaps as a consequence of the above meeting, Lakewood received \$1 million of "Additional Formula Aid" outside the regular CEIFA aid payment schedule under budget language in the 2004-2005 Appropriation Act (see the originating budget language on page B-42 of the 2004-2005 Appropriations Handbook.⁵) For the fiscal years subsequent to the 2004-2005 fiscal year through the 2007-2008 fiscal year Lakewood also received this additional amount under budget language that required school districts to receive the same amount of "Additional Formula Aid" as the amount which was received in the preceding year. During this period I was retained as a consultant in each fiscal year from the 2004-05 fiscal year through the 2007-08 fiscal year and assisted the district with a variety of financial matters including responding to a C.192 Nonpublic State Aid enrollment audit.⁶ My thinking and I believe that of district school officials during this period was that \$1 million of aid outside the formula was insufficient but we were grateful that to some small extent Lakewood's school funding problem had been acknowledged.

Again for the fiscal years 2008-09 through 2011-12, I was retained as a consultant for Lakewood with a focus on SFRA and various other legal matters. The "School Funding Reform Act of 2008" was approved on January 13, 2008. According to the New Jersey Department of Education, the new school funding law was designed to ensure that all children in all communities have the opportunity to succeed. According to the Department the proposal was a culmination of five years of work by the Department to develop an equitable and predictable way to distribute aid for education by developing a funding formula that would meet the needs of all students and would address the inequities that existed in the previous CEIFA formula. The Department indicated that it

⁵ Lakewood is uniquely defined in the following budget language. "Notwithstanding any provision of law to the contrary, of the amount appropriated hereinabove for Additional Formula Aid, \$1,000,000 shall be allocated to any "non-Abbott school district" that enrolled less than 50 percent of the district's resident school aged population as measured in the 2000 Decennial Census and whose local share calculated pursuant to section 14 of P.L.1996, c.138 (C.18A:7F-14) for fiscal 2002 is greater than 80 percent and whose low income concentration rate for fiscal 2002 exceeds 45 percent."

⁶ The final report concerning this audit is dated June 27, 2008 and if necessary I can provide a copy of the audit to the court.

recognized the need to fund districts based on actual community characteristics, and was committed to implementing a new formula that could equitably be applied to all school districts.

Unfortunately, for Lakewood the new school funding law (SFRA) failed to address the inequity in the local share calculation that I had identified in CEIFA due to the unique characteristics of Lakewood. I prepared a position paper for Lakewood dated November 12, 2008⁷ which was again provided to state officials pointing out that the prior acknowledged problem had not been addressed with the enactment of SFRA since SFRA calculated its local share in the same manner as CEIFA.

Recently, during the last seven months of the 2017-18 school year, I was again retained by Lakewood to assist in the district's effort to highlight and explain Lakewood's unique school funding problem to the incoming new administration. In late December, 2017 I prepared a brief position paper⁸ for the school board which indicated that the school funding problem regarding Lakewood had reached the critical stage. For the 2017-18 school budget the general fund tax levy increased from \$94,088,028 to \$96,961,999⁹ an increase of \$2,873,971 or 3.05%. In addition the New Jersey Department of Education approved a state aid advance of \$8,522,678¹⁰ to allow the school district to provide a budget which would better be able to offer students a thorough and efficient education. It was my understanding at the time that it was possible the new administration might fully fund SFRA for the 2018-19 school year. Unfortunately, it was my opinion that full funding under the law would not mitigate Lakewood's unique school funding problem and in fact could exacerbate the problem due to deficiencies in the law and Lakewood's unique demographics

Under a full funding scenario for the 2017-18 school year information from the New Jersey Department of Education showed that Lakewood would have received only \$3,251,269¹¹ more SFRA aid than the district actually was receiving in 2017-18. This amount of additional aid would not have avoided the necessity of New Jersey Department of Education intervention. Significantly, Equalization Aid the largest state aid category would have decreased from \$15,070,904 to \$7,823,284 while special education categorical aid would only have increased from \$2,873,971 to \$5,010,063.¹² The fact that there would have been an overall increase of \$3.25 million was solely attributable to the fact that transportation aid would have increased to a level that appeared to me to be appropriate given Lakewood's unique student transportation circumstance. But it is clear that the state aid provided for the purpose of offering students a thorough and efficient education would have been reduced. I predicted that (if one understands how the SFRA worked) it was highly likely that intervention and a state aid advance would be needed again

⁷ If necessary I can provide a copy of my position paper to the court.

⁸ My understanding is that Mr. Inzelbuch submitted a copy of my December 27, 2017 position paper to the court on January 3, 2018.

⁹ See Page 2 of Lakewood's 2018-19 User Friendly Budget Summary.

¹⁰ See Page 2 of Lakewood's 2018-19 User Friendly Budget Summary. Also, see Commissioner Harrington's November 9, 2017 letter to the State Treasurer that indicates that "this advance payment is necessary to ensure the provision of a thorough and efficient education."

¹¹ See Page 8 of Lakewood's "Est. 2017-18 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education, Division of Finance dated April 7, 2017.

¹² See Page 8 of Lakewood's "Est. 2017-18 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education, Division of Finance dated April 7, 2017.

for the 2018-19 school year. In my opinion that was not feasible indefinitely. I felt future state aid advances (loans) were problematic (an advance of \$5,640,183¹³ was also approved for the 2016-17 school year) since they would have to be repaid out of funds that likely would not be available for that purpose. I indicated that unless the state wanted simply that the New Jersey Department of Education intervene again in 2018-19 and continue to make matters worse the incoming new administration should seriously consider addressing the very unique school funding problem in Lakewood immediately.

On January 1, 2018 Governor-elect Murphy's Education, Access, and Opportunity Transition Advisory Committee submitted its report.¹⁴ The report indicated that "SFRA is intended to make school funding predictable and progressive, but it has not been properly implemented." The State "has underfunded the formula by over 9 billion dollars, and nearly three-quarters of students have not received their promised aid. The Murphy Administration and the legislature should reduce the school funding deficit in an equitable and constitutional manner." The report recommended "to ensure public understanding and support for a plan to fully fund the SFRA funding formula, the public needs to fully understand its long-term implications. Such an understanding begins by preparing a detailed report on the proposed funding for each district. The formula should be used to inform the Governor's FY 2019 budget recommendations, even if financial constraints require that full funding may not be achieved immediately."¹⁵

Some SFRA Basics

I have attempted to provide the court with a brief overview of my relationship with Lakewood through the end of 2017. Before I discuss the specifics of SFRA as applied to Lakewood, I think it would be helpful for the court to have some basic understanding of several components of SFRA which are impacting Lakewood.

The Adequacy Budget

The SFRA formula calculates an Adequacy Budget for each school district in the state. The Adequacy Budget starts with a base per pupil amount and applies the weights developed by the enhanced PJP model¹⁶ for grade levels and special needs to ensure similar student populations are treated similarly. The Adequacy Budget is composed of four categories of costs: 1) a base cost amount for elementary, middle, and high school students, 2) additional costs based upon weights for at-risk and LEP students, 3) two-thirds of the census based costs for special education, and 4) all census-based costs for speech-only special education. The base cost is determined by using a "base per pupil amount" (\$11,209 for 2018-19)¹⁷ that is defined as "the cost per elementary pupil of

¹³ See Page 2 of Lakewood's 2018-19 User Friendly Budget Summary. Also see Commissioner Hespe's June 23, 2016 letter to the State Treasurer that indicates that "this advance payment is necessary to ensure the provision of a thorough and efficient education."

¹⁴ See "Report of the Access, and Opportunity Transition Advisory Committee."

¹⁵ See "Report of the Access, and Opportunity Transition Advisory Committee" page 2.

¹⁶ See PJP refers to Professional Judgment Panel. In designing SFRA, the Department of Education (DOE) used the PJP methodology in conjunction with APA, (the consulting firm Augenblick, Palaich and Associates) to determine the cost of providing an adequate education to the State's students. The DOE chose the Professional Judgment Panel (PJP) methodology because "it identifies the needed resources and determines the cost of providing services to students that are disadvantaged as well as to those that are not disadvantaged."

¹⁷ See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018.

delivering the core curriculum content standards and extracurricular and cocurricular activities necessary for a thorough and efficient education" to an elementary school student in N.J.S.A. 18A:7F-45. Once the base cost is determined for an elementary school student, the grade level weights are applied to account for the additional resources needed to educate higher grade levels as well as half day kindergarten students and full day kindergarten students. All calculations are based upon projected enrollments. The Adequacy Budget incorporates additional weights to determine costs to meet students' special needs requiring additional resources in three categories – at-risk pupils, LEP pupils, and at-risk/LEP or combination pupils. Again all calculations are based upon projected enrollments. Two-thirds of special education costs are determined using a census-based methodology¹⁸ to calculate the resources needed for all special education students. Under the census model methodology, costs are determined based on the average classification rate in the state (14.92% for 2018-19)¹⁹ and the average costs of educating special education students above the base per pupil amount (\$17,343 for 2018-19).²⁰ Special education costs within the Adequacy Budget (excluding speech-only) are determined by multiplying a district's total projected enrollment by the average classification rate and by the average special education cost. To determine the amount of costs included within the Adequacy Budget, this total is then multiplied by two-thirds. Speech-only special education costs cover resources for students who only require speech services or language development. These costs are funded and included within the Adequacy Budget. In funding speech-only special education, SFRA employs the census-based method, providing for such costs at the average classification rate of 1.63% for 2018-19.²¹ The average excess cost for speech-only special education is \$1,180 per pupil for 2018-19.²² Once the base cost for a district is determined, it is modified by applying the Geographic Cost Adjustment (.96780 for Ocean County for 2018-19)²³ which is "an adjustment that reflects county differences in the cost of providing educational services that are outside the control of the district."²⁴

Equalization Aid

Equalization Aid is the state aid provided to support a district's Adequacy Budget. Equalization Aid funds the difference between a district's "Local Fair Share" and its Adequacy Budget.

Local Fair Share

Each district's Local Fair Share is calculated by using a formula to determine a district's contribution to its Adequacy Budget costs. The formula considers a community's property wealth (equalized valuations) and aggregate income, which are each indexed by

¹⁸ An "Analysis of New Jersey's Census-Based Special Education Funding System" prepared for the New Jersey Department of Education by Augenblick, Palaich and Associates in October, 2011 made "two tentative conclusions from the existing data: (1) New Jersey might need to consider funding special education based on the actual enrollment of special education students in districts and (2) the state might need to consider some differentiation of funding for higher cost students before the extraordinary aid threshold is reached."

¹⁹ See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018. Lakewood's October, 2017 A.S.S.A. Summary shows Lakewood's actual classification rate is 24.27%. However, this rate excludes the students in nonpublic schools with service plans.

²⁰ See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018.

²¹ See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018.

²² See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018.

²³ See Page 3 of Lakewood's "Projected 2018-19 State School Aid" printouts dated 03/15/2018.

²⁴ See N.J.S.A. 18A:7F-45.

statewide multipliers to ensure an equalized local tax effort throughout the state. The statewide multipliers or rates are the same for each variable for each district, so a district's contribution to the Adequacy Budget is determined in the same way for each district. Essentially, Local Fair Share is the theoretical amount that can be raised by the local school tax levy. Under SFRA, a district must raise the lesser of its Local Fair Share under SFRA or the local share it raised the previous year or what it is raising in taxes. A district may raise more than its Local Fair Share, but annual increases in the local school levy are capped by a tax levy growth limitation.²⁵

Categorical Special Education Aid

Categorical Special Education Aid is a separate revenue stream provided in addition to the wealth based Equalization Aid. Categorical Special Education Aid does not consider a district's wealth or ability to raise local funds. The amount of Categorical Special Education Aid is determined generally by multiplying the cost per-pupil by the projected number of pupils eligible for the aid. Categorical aid is provided for: 1) one-third of census based costs for special education (the portion not included within a district's Adequacy Budget).

State Aid Growth Limit

Under SFRA in N.J.S.A. 18A:7F-47 the annual increase in SFRA aid was capped by the "State aid growth limit" at 10% in the case of a district spending above adequacy and at 20% in the case of a district spending below adequacy. The cap was removed for the 2018-19 school year under language in the FY 2019 Appropriations Act²⁶ and for the 2019-20 school years and beyond with the enactment of P.L. 2018, Chapter 67²⁷.

Determination of Spending Above or Below Adequacy

Under SFRA a determination is made regarding a district's status with regard to the adequacy of its budget. Prior to the enactment of P.L. 2018, Chapter 67 this determination was made pursuant to N.J.S.A. 18A:7F-47 by comparing 1) the sum of a district's prebudget year's Equalization Aid, general fund school tax levy, categorical special education aid and categorical security aid to 2) the sum of the district's budget year's, Adequacy Budget, categorical special education aid and categorical security aid. If the sum 1) was larger the spending was above adequacy. If the sum 2) was larger the spending was below adequacy. In P.L. 2018, Chapter 67 this comparison is described in section 1 of the law. For Lakewood the 2018-19 Adequacy Budget is \$113,812,556 + Special Education Aid is \$5,007,392 + Security Aid is \$2,722,718 totaling \$121,542,666. But the general fund tax levy is \$100,827,483 + Equalization Aid is \$2,278,384 + Special Education aid is \$5,007,392 + Security Aid is \$2,722,718 totaling \$110,835,977 meaning Lakewood's budget is \$10,706,689 below adequacy under SFRA *before Lakewood's unique circumstances are considered* (this occurs because Lakewood's general fund tax levy is restricted and below its calculated local share under SFRA). When the aid

²⁵ See C.18A:7F-38. The tax levy growth limitation is calculated as follows: the sum of the prebudget year adjusted school tax levy and an adjustment for increases in enrollment multiplied by 2.0 percent, and certain other specified allowable adjustments.

²⁶ See Page B-58 of the 2018-19 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget.

²⁷ See section 8 of this new law.

advance amount of \$28,182,090 is factored in, Lakewood's T&E spending level is in reality \$139,018,067. SFRA funds only \$110,835,977.

Adjustment Aid

Through 2017-18 Adjustment Aid originally provided funding to ensure no district in the state would receive less state aid in the 2008/2009 school year than it received in the previous 2007-08 school year plus two percent. The funding then continued in subsequent years, so that no district received less than its 2008-2009 aid, absent a significant decrease in the district's enrollment.²⁸ N.J.S.A. 18A:7F-58(a)(2)(3). Lakewood did not initially qualify for Adjustment Aid until the 2018-19 school year. However, the language in the FY 2019 Appropriations Act eliminated most of Lakewood's Adjustment Aid. P.L. 2018, Chapter 67 eliminated Adjustment Aid for all school districts.²⁹

Lakewood's SFRA Funding 2008-09 through 2017-18

The SFRA school aid formulas were enacted in part because the Legislature found and declared³⁰ among other things that:

1. "The State, in addition to any constitutional mandates, has a moral obligation to ensure that New Jersey's children, wherever they reside, are provided the skills and knowledge necessary to succeed. Any school funding formula should provide resources in a manner that optimizes the likelihood that children will receive an education that will make them productive members of society."
2. "School districts must be assured the financial support necessary to provide those constitutionally compelled educational standards."
3. "In the absence of a clear, unitary, enforceable statutory formula to govern appropriations for education, crucial funding decisions are made annually, in competition for limited State resources with other needs and requirements as part of the annual budget."
4. SFRA represented "the culmination of five years of diligent efforts by both the Executive and Legislative branches of State government to develop an equitable and predictable way to distribute State aid that addresses the deficiencies found in past formulas as identified by the Supreme Court."
5. "The time has come for the State to resolve the question of the level of funding required to provide a thorough and efficient system of education for all New Jersey schoolchildren. The development and implementation of an equitable and adequate school funding formula will not only ensure that the State's students have access to a constitutional education as defined by the core curriculum content standards, but also

²⁸ See N.J.S.A. 18A:7F-58(a)(2)(3).

²⁹ See section 7 of this new law.

³⁰ The five findings listed below on this page are excerpts from N.J.S.A. 18A:7F-44 the Legislature's "Findings, declarations relative to school funding reforms."

may help to reduce property taxes and assist communities in planning to meet their educational expenses. The development of a predictable, transparent school funding formula is essential for school districts to plan effectively and deliver the quality education that our citizens expect and our Constitution requires."

SFRA was first implemented for the 2008-09 school year. As it turned out this was the only school year for which SFRA was fully funded and fully implemented for all school districts in the state. Since this is the case and for the purpose of comparison later it is important to understand how Lakewood was initially funded under SFRA in that first year.

Lakewood's projected 2008 enrollment was 5,891³¹ students. Lakewood's equalized valuation as of October 1, 2007 was \$7,951,462,176 and its aggregate income for 2005 was \$967,461,542. These two variables were used to calculate the district's local fair share of \$58,845,080.³² Lakewood's Adequacy Budget was calculated to be \$83,162,586. Its uncapped Equalization Aid was \$24,317,506 (the difference between \$83,162,586 and \$58,845,080). Lakewood's budget was determined to be below adequacy and thus Lakewood was entitled to an overall aid increase of 20% above its 2007-08 aid amount of \$22,149,930.³³ Lakewood received SFRA aid as follows:

Table 1-Lakewood's 2008-09 SFRA Aid

Equalization Aid	\$17,012,441 ³⁴
Special Education Categorical Aid	\$2,962,522
Security Categorical Aid	\$1,792,047
Transportation Aid	\$3,982,997
Extraordinary Aid ³⁵	\$829,909
Adjustment Aid	\$0
Total 2008-09 Aid Capped	\$26,579,916
Total 2008-09 Aid Capped without Extraordinary Aid	\$25,750,007
Total 2008-09 Aid Uncapped without Extraordinary Aid	\$33,055,072

³¹ See Lakewood's "2008-09 Revised District State Aid Profile," prepared by the New Jersey Department of Education's Division of Finance. All of the numerical information that follows in this discussion of 2008-09 funding was obtained from this document. Also, the actual 2008 enrollment was 5,422.5.

³² The equalized valuation multiplier/rate was .0092690802 and the income multiplier/rate was .04546684.

³³ This total included all K-12 2007-08 state aid and extraordinary aid paid in FY07.

³⁴ Reduced due to the State Aid Growth Limit.

³⁵ The amount was a projection based on 2006-07 applications that would be adjusted based on the actual applications submitted and approved in 2009.

After 2008-09 Lakewood's SFRA aid was provided as follows:

Table 2-Lakewood's SFRA Aid 2009-10 through 2017-18

All of the information in Table 2 is taken directly from the State Aid Summaries available on the Department of Education's website.

School Year	Equalization Aid	Special Education Aid	Security Aid	Transportation Aid	Total Aid
2009-10	\$14,932,127	\$2,844,367	\$2,037,382	\$5,936,131	\$25,750,007
2010-11	\$14,793,805	\$2,748,847	\$2,180,913	\$1,050,137	\$20,773,702
2011-12	\$14,793,805	\$2,748,847	\$2,180,913	\$3,043,050	\$22,766,615
2012-13	\$14,972,074	\$2,904,408	\$2,136,065	\$3,865,747	\$23,878,294
2013-14	\$15,263,034	\$2,975,869	\$2,161,835	\$3,934,658	\$24,335,396
2014-15	\$15,263,034	\$2,975,869	\$2,161,835	\$3,934,658	\$24,335,396 ³⁶
2015-16	\$15,263,034	\$2,975,869	\$2,161,835	\$3,934,658	\$24,335,396 ³⁷
2016-17	\$15,070,904	\$3,053,082	\$2,186,868	\$4,199,793	\$24,510,647 ³⁸
2017-18	\$15,070,904	\$3,155,515	\$2,186,868	\$4,199,793	\$24,613,080 ³⁹

In order to completely understand Lakewood's school funding dilemma it is necessary to also examine the amounts of SFRA aid Lakewood would have received if the law had been fully implemented. Please see the information in the following table.

Table 3-Lakewood's Fully Funded SFRA Aid 2014-15 through 2017-18

School Year	Equalization Aid	Special Education Aid	Security Aid	Transportation Aid	Total Aid
2014-15	\$13,240,890	\$4,341,986	\$2,589,864	\$9,029,735	\$29,202,475 ⁴⁰
2015-16	\$11,650,780	\$4,665,304	\$2,865,168	\$10,161,311	\$29,342,563 ⁴¹
2016-17	\$9,773,610 ⁴²	\$5,181,944	\$2,877,070	\$11,509,939	\$29,342,563 ⁴³
2017-18	\$7,823,284	\$5,010,063	\$2,458,331	\$12,752,631	\$28,044,309 ⁴⁴

Also please note the following information regarding each school year.

Regarding the 2014-15 school year Lakewood's projected 2014 enrollment was 5,837⁴⁵ students. Lakewood's equalized valuation as of October 1, 2013 was \$7,266,756,805 and its aggregate income for 2011 was \$1,280,273,414. These two variables were used to calculate the district's local fair share of \$85,419,632.⁴⁶ Lakewood's Adequacy Budget was calculated to be \$109,066,829. Its uncapped

³⁶ The district also received \$58,370 as PARCC Readiness Aid and \$58,370 as Per Pupil Growth Aid.

³⁷ Again the district also received \$58,370 as PARCC Readiness Aid and \$58,370 as Per Pupil Growth Aid.

³⁸ Again the district also received \$58,370 as PARCC Readiness Aid and \$58,370 as Per Pupil Growth Aid and also received Professional Learning Community Aid of \$63,220.

³⁹ Again the district also received \$58,370 as PARCC Readiness Aid and \$58,370 as Per Pupil Growth Aid and also received Professional Learning Community Aid of \$63,220.

⁴⁰ Taken directly from the State Aid Summaries available on the Department of Education's website.

⁴¹ Taken directly from the State Aid Summaries available on the Department of Education's website.

⁴² Reduced due to the State Aid Growth Limit.

⁴³ See the "EST. 2016-17 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance.

⁴⁴ See the "EST. 2017-18 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance.

⁴⁵ See the "EST. 2014-15 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance. All of the numerical information that follows in this discussion of 2014-15 funding was obtained from this document. Also, the actual 2014 enrollment was 6,020.

⁴⁶ The equalized valuation multiplier/rate was .014321622 and the income multiplier/rate was .052150986.

Equalization Aid was \$23,647,197 (the difference between \$109,066,829 and \$85,419,632). Lakewood's budget was determined to be below adequacy and thus Lakewood was entitled to an overall aid increase of 20% above its 2013-14 aid amount of \$24,335,396. The total 2014-15 uncapped SFRA aid was \$39,608,782.

Regarding the 2015-16 school year Lakewood's projected 2015 enrollment was 6,192⁴⁷ students. Lakewood's equalized valuation as of October 1, 2014 was \$7,586,119,238 and its aggregate income for 2012 was \$1,518,509,794. These two variables were used to calculate the district's local fair share of \$96,736,200.⁴⁸ Lakewood's Adequacy Budget was calculated to be \$119,334,752. Its uncapped Equalization Aid was \$22,599,552 (the difference between \$119,334,752 and \$96,735,200). Lakewood's budget was determined to be below adequacy and thus Lakewood was entitled to an overall aid increase of 20% above its 2014-15 aid amount of \$24,452,136 (which included the PARCC Readiness Aid of \$58,370 and the Per Pupil Growth Aid of \$58,379). The total 2015-16 uncapped SFRA aid was \$40,291,335.

Regarding the 2016-17 school year Lakewood's projected 2016 enrollment was 6,322⁴⁹ students. Lakewood's equalized valuation as of October 1, 2015 was \$8,251,500,724 and its aggregate income for 2013 was \$1,414,169,298. These two variables were used to calculate the district's local fair share of \$92,974,112.⁵⁰ Lakewood's Adequacy Budget was calculated to be \$118,558,773. Its uncapped Equalization Aid was \$25,584,661 (the difference between \$118,558,773 and \$92,974,112). Lakewood's budget was determined to be below adequacy and thus Lakewood was entitled to an overall aid increase of 20% above its 2015-16 aid amount of \$24,452,136 (which included the PARCC Readiness Aid of \$58,370 and the Per Pupil Growth Aid of \$58,379). The total 2016-17 uncapped SFRA aid was \$45,452,136.

Regarding the 2017-18 school year Lakewood's projected 2017 enrollment was 6,091⁵¹ students. Lakewood's equalized valuation as of October 1, 2016 was \$9,019,235,565 and its aggregate income for 2014 was \$1,625,147,547. These two variables were used to calculate the district's local fair share of \$102,034,106.⁵² Lakewood's Adequacy Budget was calculated to be \$109,857,390. Its uncapped Equalization Aid was \$7,823,284 (the difference between \$109,857,390 and \$102,034,106). Lakewood's budget was determined to be below adequacy and thus Lakewood was eligible for an overall aid increase of 20% above its 2016-17 aid amount of \$24,690,607 (which included the PARCC Readiness Aid of \$58,370, Per Pupil Growth Aid of \$58,379 and Professional Learning Community Aid of \$63,220). However, the

⁴⁷ See the "EST. 2015-16 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance. All of the numerical information that follows in this discussion of 2015-16 funding was obtained from this document. Also, the actual 2015 enrollment was 6,100.

⁴⁸ The equalized valuation multiplier/rate was .014909959 and the income multiplier/rate was .052921406.

⁴⁹ See the "EST. 2016-17 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance. All of the numerical information that follows in this discussion of 2016-17 funding was obtained from this document. Also, the actual 2016 enrollment was 5,919.5.

⁵⁰ The equalized valuation multiplier/rate was .014072252 and the income multiplier/rate was .049379537.

⁵¹ See the "EST. 2017-18 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance. All of the numerical information that follows in this discussion of 2017-18 funding was obtained from this document. Also, the actual 2017 enrollment was 5,920.5.

⁵² The equalized valuation multiplier/rate was .0140008725 and the income multiplier/rate was .047823491.

district's total aid was below the 20% threshold (\$29,628,728) meaning the State Aid Growth Limit was not applied. The total 2017-18 uncapped SFRA aid was \$28,044,309.

Examining the above information for 2014-15 through 2017-18 school years, for the three years that the state approved state aid advances (loans), it's clear that the fact that SFRA was not fully funded contributed to Lakewood's revenue problem, however only in 2014-15 (based upon the approved state aid advance amounts for each year) could intervention have been avoided if SFRA had been fully funded.⁵³ Certainly, the approved amounts for the 2016-17 and 2017-18 school years would have been smaller but state intervention would have still been required to support the budget that was actually approved for each of those two years.

Also note that nine years after the 2008-09 school year Lakewood's school budget was still below adequacy. In 2017-18 the district's allowable general fund school tax levy of \$96,961,999 was below its local fair share of \$102,034,106 a shortfall of \$5,072,107. Under the math in the SFRA definition of adequacy a school district that is not raising its local fair share (for any reason) is below adequacy and as long as such district continues not to raise its local share the school budget will remain below adequacy. When you consider the fact that a state aid advance (loan) of \$8,522,678 was approved for the 2017-18 school budget you are able to quickly determine that had the district been able to raise its local fair share state intervention would still been required to support the budget that was actually approved for the 2017-18 school year.

Lakewood's 2018-19 SFRA Aid

On March 13, 2018 Governor Murphy delivered his 2018-19 budget address in which he stated "This budget increases our current investment in public school classrooms by \$341 million and begins a four-year phase-up to fully funding our public schools. Even with these investments, we know our current school funding formula, enacted in 2008, needs to be modernized, and I ask you to work with me to make these changes so we can reach this goal of full, fair funding by the 2021-2022 school year. Together, we can fulfill the promises made a decade ago while ensuring that our dollars are spent according to the needs of students and districts today."

As required by law the "Projected 2018-19 State School Aid" printouts were provided to school districts on March 15, 2018 after the initial testimony in this case had been completed. The SFRA aid amounts in these printouts were the amounts that districts were required to use when preparing their 2018-19 school budget. These are the aid amounts shown in Lakewood's "2018-19 User Friendly Budget."

⁵³ The motion to approve the state aid advance was not listed on the Board's Agenda until June 18, 2015. See BOE Minutes, June 18, 2015 Board Meeting.

Lakewood's "Projected 2018-19 State School Aid" printouts and Lakewood's "2018-19 User Friendly Budget" show the following information:

Table 4-Lakewood's 2018-19 Budgeted SFRA Aid

Equalization Aid	\$15,070,904
Special Education Categorical Aid	\$3,155,515
Security Categorical Aid	\$2,186,868
Transportation Aid	\$4,618,868
Adjustment Aid	\$0
Total 2018-19 Aid	\$25,032,282
Total 2018-19 Aid Fully Funded SFRA	\$25,750,007

Lakewood's projected 2018 enrollment was 5,997⁵⁴ students. Lakewood's equalized valuation as of October 1, 2017 was \$10,097,357,987 and its aggregate income for 2015 was \$1,805,905,973. These two variables were used to calculate the district's local fair share of \$111,534,172.⁵⁵ Lakewood's Adequacy Budget was calculated to be \$113,812,556. Its uncapped Equalization Aid was \$2,278,384 (the difference between \$113,812,556 and \$111,534,172). Lakewood's budget was determined to be below adequacy and thus Lakewood would normally have been eligible for an overall aid increase of 20% above its 2017-18 aid amount of \$24,793,040 (which included the PARCC Readiness Aid of \$58,370, Per Pupil Growth Aid of \$58,379 and Professional Learning Community Aid of \$63,220). However, the district's total aid was below the 20% threshold (\$29,751,648) meaning the State Aid Growth Limit would not have been applied. This was in addition to the fact that the State Aid Growth Limit was not applied due to the four year phase in under the Governor's funding approach. Also, note that due to the phase in the actual allocations of state aid by aid category for budget purposes is quite different (and somewhat misleading) when compared to the allocations of state aid by aid category under a fully funded SFRA. These allocations are shown below:

Table 5-Lakewood's 2018-19 Original Fully Funded SFRA Aid

Equalization Aid	\$2,278,384
Special Education Categorical Aid	\$5,007,392
Security Categorical Aid	\$2,722,718
Transportation Aid	\$13,456,967
Adjustment Aid	\$2,284,546
Total 2018-19 Aid Fully Funded SFRA	\$25,750,007
Total 2018-19 Aid Fully Funded SFRA without Adjustment Aid	\$23,465,461

At this point it has become clear that Lakewood's uncapped Equalization Aid under a fully funded version of SFRA has been declining due to Lakewood's unique demographics. The reduction in the district's uncapped Equalization Aid has been substantial over the last two school years. Also note that at this point Lakewood for the first time was eligible to receive Adjustment Aid. Significantly, the total 2018-19 fully

⁵⁴ See the "EST. 2018-19 State School Aid (Full SFRA Funding)" printouts prepared by the New Jersey Department of Education's Division of Finance.

⁵⁵ The equalized valuation multiplier/rate was .013828828 and the income multiplier/rate was .046200477.

funded SFRA aid total of \$25,750,007 (uncapped) is equal to the total 2008-09 aid capped (without Extraordinary Aid). See Table 1.

Table 6-Lakewood's Uncapped Equalization Aid Under Fully Funded SFRA

School Year	
2008-09	\$24,317,506
2014-15	\$23,647,197
2015-16	\$22,599,552
2016-17	\$25,584,661*
2017-18	\$7,823,284
2018-19	\$2,278,384

* In my opinion all of and uncapped aid calculations for 2016-17 are suspect.

There is a very large difference between the 2016 projected enrollment and actual enrollment.

For the most part the substantial reduction in the amount of uncapped Equalization Aid is attributable to the substantial and rapid rise in Lakewood's equalized valuation and aggregate income which are directly impacting Lakewood's local share calculation. These changes are dramatic and disproportionate to the changes in the district's Adequacy Budget calculations which are based upon the district's projected enrollment.

Table 7-Lakewood's Property Value (Equalized Valuations) and Aggregate Income

School Year ⁵⁶	Equalized Valuation ⁵⁷	Aggregate Income ⁵⁸
2008-09	\$7,951,462,176*	\$967,461,542
2014-15	\$7,266,756,805	\$1,280,273,414
2015-16	\$7,586,119,238	\$1,518,509,794
2016-17	\$8,251,500,724	\$1,414,169,298
2017-18	\$9,019,235,565	\$1,625,147,547
2018-19	\$10,097,357,987	\$1,805,905,973

*This figure appeared to be odd to me. I doubled checked that this figure which was used by the Department of Education for the 2008-09 school aid calculations agreed with the amount shown on the Division of Taxation's Table of Equalized Valuations thinking that perhaps there had been a court appeal which sometimes happens. However, the figure is accurate as there was no court appeal.

From 2014-15 to 2018-19 the property value used in Lakewood's school aid calculations increased by 38.95% and the aggregate income used in Lakewood's school aid calculations increased by 41.06%. From 2014-15 to 2018-19 the property value data for all other communities in the remainder of the state increased overall by 6.71%.⁵⁹ From 2014-15 to 2018-19 aggregate income data for all other communities in the remainder of the state increased overall by 16.85%.⁶⁰

⁵⁶ Refers to the aid year.

⁵⁷ As of October 1 of the prebudget year.

⁵⁸ Three years prior to the school year.

⁵⁹ I calculated this percentage by using the Statewide "Table of Equalized Valuations" data that is available on the Division of taxation's website for the two years.

⁶⁰ I calculated this percentage by using the Statewide Calculation data available from the New Jersey Department of Education for the 2014-15 and 2018-19 school years.

Lakewood then proceeded to prepare its 2018-19 school budget using the SFRA aid amounts that are shown in Table 4. While the budget preparation and adoption process was proceeding on April 24, 2018 a certification I had prepared for the court was included with a letter to the court prepared by Mr. Inzelbuch. At that time I was concerned about the \$28 million revenue shortfall in the proposed 2018-19 school budget. Subsequently, On May 7, 2018 Mr. Glenn Forney, the New Jersey Department of Education's Deputy Assistant Commissioner, Division of Finance sent a letter to Lakewood's School Superintendent which indicated that "the Department has no choice but to recommend granting the assistance in the form of a loan of \$28,182,090, repayable beginning in the 2019-2020 school year." Subsequently, the petitioners withdrew their pending emergency motion.

Mr. Forney's May 7, 2018 Letter

Since I am familiar with the provisions of N.J.S.A. 18A: 7A-56 and N.J.S.A. 18A: 7A-58, I carefully read this letter and was struck by several things mentioned in the letter. The first was the fact that Mr. Forney mentioned that "It (Lakewood) has refused to provide timely, complete and accurate backup documentation⁶¹ that would support its request for an additional \$28,182,090 grant of aid." He seemed to be suggesting that if timely, complete and accurate backup documentation had been provided the district could have received a grant rather than a loan. As far as I am aware there is no specific statute that allows the Commissioner to provide a grant rather than a loan. My understanding is that the Commissioner has broad powers to ensure the provision of a thorough and efficient education that may include the granting of funds to a school district but the funding is not normally readily available in the state budget. The funding for the loans pursuant to N.J.S.A. 18A: 7A-56 are provided for in the annual Appropriations Act in budget language which states "Such amounts received in the 'School District Deficit Relief Account,' established pursuant to section 5 of P.L.2006, c.15 (C.18A:7A-58), including loan repayments, are appropriated, subject to the approval of the Director of the Division of Budget and Accounting."

In addition N.J.S.A. 18A: 7A-56 requires that an advance state aid payment "shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education." Mr. Forney indicated only that "the Department will accept Lakewood's representation that it needs additional funds in the amount of \$28,182,090 in order to close its budget gap" and seemed to be going at great lengths to avoid saying that Lakewood needed the advance state aid to ensure the provision of a thorough and efficient education which clearly was the case as this is the sole basis under the statute for such advances to be approved. This statute appears to provide the only means for the Department of Education to provide some immediate short term financial relief to a

⁶¹ I am unaware of exactly what backup documentation Mr. Forney was seeking. However, Mr. Shafter stated he was "intimately involved in the preparation of the budgets" and Mr. Azzara indicated that Lakewood had a revenue problem and he further stated "So, we've done everything we can to try to balance the budget. And we're pretty much down to what we, you know, just what we need to meet T and E and get the Superintendent and the County Superintendent to sign off on the budget and certify that it's adequate." Yet, Mr. Forney stated that the district would not provide the relevant records that "would reveal detail about the district's troubles and inform the best way to resolve them." In addition no mention is made concerning the Executive County Superintendent's role in the 2018-19 approval process. In my opinion, such decision's need to consider an educator's perspective. I do not know if this was the case in this instance.

school district in Lakewood's situation. I can understand why Mr. Forney stated "the Department has no choice" as this was likely the only option available to the Department to resolve Lakewood's revenue problem. Unfortunately, Lakewood also had no choice but to accept the advance state aid payment on May 9, 2018 since SFRA has failed in Lakewood.

The district's acceptance of the state aid payment on May 9, 2018 comes with a steep price. The district must agree to rob Peter (future students) to pay Paul (present students). Over time Lakewood will receive no more school aid than it otherwise would since the repayments come out of future school aid. The annual tax increase limit (the 2% cap) on future annual general fund school tax increases remains unchanged meaning in Lakewood less overall funds will be available for the provision of a thorough and efficient education in the future. In my opinion N.J.S.A. 18A: 7A-56 was never intended to provide advance state aid payments of this magnitude (\$28 million) nor to be used repeatedly to fund budget revenue shortfalls.⁶²

In this regard I was curious and I did obtain via an Open Public Records Act request information from the Department of Education concerning the payments and payees from the School District Deficit Relief Account for the 2015-16 through 2017-18 fiscal years.

Below is a copy of the spreadsheet I received:

Deficit Accounts for FY2016, 2017, 2018		
FY2016	School District	Dollar Amount
ST AID PYMT TO SCHOOL DISTRICT	RIDGEFIELD PARK BD OF ED	2,500,000.00
ST AID PYMT TO SCHOOL DISTRICT	ELMER BD OF ED	668,125.00
ST AID PYMT TO SCHOOL DISTRICT	WOODBINE BD OF ED	65,000.00
ST AID PYMT TO SCHOOL DISTRICT	LAKEWOOD BD OF ED	5,640,183.00 ⁶³
ST AID PYMT TO SCHOOL DISTRICT	HI NELLA BD OF ED	810,000.00
	Total for FY16	<u>9,683,308.00</u>
FY2017	School District	Dollar Amount
ST AID PYMT TO SCHOOL DISTRICT	ELMER BD OF ED	825,761.00
ST AID PYMT TO SCHOOL DISTRICT	HI NELLA BD OF ED	568,161.00
	Total for FY17	<u>1,393,922.00</u>
FY2018	School District	Dollar Amount
ST AID PYMT TO SCHOOL DISTRICT	LAKEWOOD BD OF ED	8,522,678.00
ST AID PYMT TO SCHOOL DISTRICT	HI NELLA BD OF ED	988,078.00
	Total for FY18	<u>9,510,756.00</u>

I note that the \$4,500,000 for 2015-16 is not listed as being paid from this account. However, the district's CAFR indicates this payment was received in FY2014-15.⁶⁴ It appears that the payment was to reduce the size of the district's deficit at the conclusion of the 2013-14 so as not to negatively impact the district's 2015-16 budget.

⁶² In my opinion N.J.S.A. 18A: 7A-56 was intended to deal with existing deficits resulting from overspending rather than to provide revenue to balance a district's initially approved budget.

⁶³ The district's Comprehensive Annual Financial Report (CAFR) for 2016-17 indicates this is revenue for the district's 2016-17 school budget.

⁶⁴ Commissioner Hespe's June 16, 2015 letter to the State Treasurer indicates that "this advance payment is necessary to ensure the provision of a thorough and efficient education."

Lakewood's 2018-19 Revised SFRA Aid

When the FY 2019 Appropriations Act was approved the legislature modified Governor's Murphy's 2018-19 four-year phase-up to fully funding of SFRA proposal with budget footnote language included in the Appropriations Act.⁶⁵ The budget language made only one change to SFRA⁶⁶ for 2018-19 that could have impacted Lakewood. The Adjustment Aid formula was removed from SFRA for 2018-19.

Adjustment Aid

Proponents of eliminating Adjustment Aid under the SFRA formula make the assumption that Adjustment Aid is not required as revenue to support a district's constitutionally required thorough and efficient education program. However, this assumption is not true in the case of every school district.

Under SFRA a district's budget revenue is defined as either being above or below adequacy. A budget deemed as having adequate revenue under the law has by definition sufficient revenue to allow the district to provide a thorough and efficient educational program. A budget deemed as having revenue below adequacy does not contain sufficient revenue to provide a thorough and efficient educational program.

In order for budget revenue to be deemed as adequate a district must have Equalization Aid, and a general fund tax levy that together sum to an amount at least equal to the district's Adequacy Budget amount that is calculated for every district under the SFRA formula.

In the case of the Lakewood it is inappropriate to eliminate its Adjustment Aid for the 2018-19 school year since Lakewood's school budget is under adequacy and this aid is needed to support the spending level required under SFRA that provides a thorough and efficient educational program. For 2018-19 Lakewood's Adequacy Budget under SFRA is \$113,812,556. Lakewood's full funding SFRA Equalization Aid amount is \$2,278,384 and its general fund tax levy is \$100,827,483. These two amounts sum to \$103,105,867 which is an amount \$10,706,689 less than Lakewood's Adequacy Budget of \$113,812,556 indicating that its budget revenue under SFRA is below adequacy *before Lakewood's unique demographic needs are even considered*. So under SFRA as it presently stands in Lakewood the full funding Adjustment Aid of \$2,284,546 was required to help to fill this gap to better enable the district to provide a thorough and efficient educational program.

The fact that the New Jersey Department of Education did offer the district a loan of \$28,182,090 which is an amount well in excess of the amount the SFRA defines as the amount the district is below adequacy (\$10,706,689) is a clear indication that due to Lakewood's unique demographics SFRA is severely flawed as applied to Lakewood.

⁶⁵ See Page B-58 of the FY2019 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget.

⁶⁶ The budget language also removed the State Aid Growth Limit, however the limit could not have impacted Lakewood since Lakewood was eligible for Adjustment Aid under the ordinary SFRA calculations.

To be clear it is appropriate to reduce Adjustment Aid in some districts but only after a determination is made regarding the standing of each district's budget in regard to the SFRA definition of budget adequacy or inadequacy. Any such reduction should be only the amount of Adjustment Aid that is in excess of the amount needed to support a district's thorough and efficient educational program. In Lakewood's such excess amount does not exist.

Lakewood received its revised state aid for 2018-19 in July, 2018⁶⁷ after the 2018-19 school year had begun. The revision provided \$23,465,461 of total SFRA aid for 2018-19 which was \$1,566,821 below the \$25,032,282 total SFRA aid amount the district was advised to budget as of May 7, 2018 and \$1,327,579 below the \$24,793,040 total SFRA aid amount (which includes 58,370 of PARCC Readiness Aid, \$58,370 of Per Pupil Growth Aid and \$63,220 of Professional Learning Community Aid) the district received in 2017-18. It especially important to note that the \$23,465,461 amount is Lakewood's 100% fully funded amount without Adjustment Aid. See Table 5. Also, note that this amount was calculated by category in accordance with the categories listed in Table 5.

For 2018-19 the state directed that this full funded amount be budgeted as follows:

Table 8-Lakewood's Final 2018-19 Budgeted SFRA Aid

Equalization Aid	\$15,070,904
Special Education Categorical Aid	\$3,155,515
Security Categorical Aid	\$2,186,868
Transportation Aid	\$3,052,174
Total 2018-19 Aid	\$23,465,461
Total 2018-19 Aid Fully Funded SFRA	\$23,465,461

The revised state aid printouts also came with "Guidance"⁶⁸ regarding how Lakewood should deal with its state aid reduction of \$1,566,821. The Department of Education's guidance indicated "The original budget certified for taxes remains in place as the budget certified for taxes and that general fund tax levy will be used for all calculations that use the general fund tax levy from the original budget certified for taxes" and "Districts recognizing a decrease in state aid will reflect the revised state aid as a mid-year budget adjustment. There is no requirement for a district with a decrease in state aid to replace the 2018-19 User Friendly Budget."

Since Lakewood experienced a state aid reduction the district was advised it "must reduce its budgetary basis state aid revenue and receivable for 2018-19" and that

⁶⁷ See the "Projected 2018-19 State School Aid-Revised Aid Adjustment Pursuant to FY19 Appropriations Act" printouts Dated 07/13/2018 prepared by the New Jersey Department of Education's Division of Finance.

⁶⁸ See "Guidance on 2018-19 Revised State Aid July 13, 2018" document prepared by the New Jersey Department of Education.

"Districts experiencing a reduction in state aid have the following options by board of education/trustees resolution.

1. Use unassigned general fund surplus to maintain budgeted appropriations; or
2. Request Commissioner approval to withdraw from emergency reserve; or
3. Pursuant to *N.J.A.C. 6A:23A-14.2(d)*, withdraw from maintenance reserve to cover budgeted required maintenance costs; or
4. Reduce appropriations for 2018-19; or
5. A combination of 1, 2, 3, and 4 above."⁶⁹

Lakewood was required to hold a public meeting to adopt a plan to address the aid reduction no later than August 1, 2018 and to submit the following to the county office by August 7, 2018:

- "A narrative detailing the budget adjustment plan to be implemented in response to the state aid reduction;
- A listing of reductions to appropriations detailing the line items and accounts impacted by the plan; and
- A copy of the board resolution adopting the plan."

Lakewood was also advised that Emergency Aid was available as follows: "Pursuant to language included in the FY 2019 appropriations act, districts that received notification of a reduction in general fund aid, and are able to demonstrate fiscal distress, may apply for additional assistance."⁷⁰

The Lakewood Board of Education approved a board resolution indicating in part that "the School Business Administrator has determined that as the district is in a deficit there are no funds available for Budgeted Fund balance, therefore the only option is to reduce appropriations for the 2018-19 school year" and "that there are funds available in the State Aid Loan Repayment line account that can be reduced in the amount of \$1,566,821."⁷¹ On August 30, 2018, Lakewood submitted an application for Emergency Aid for \$1,566,821 and indicated that if their "request to the Commissioner and the Department of Treasury to reduce our loan repayment is denied, the district will have no other option other than eliminating the 1.5% salary increase for staff and reducing other line accounts as yet to be determined."⁷² In the event Lakewood does receive Emergency Aid please note that P.L. 2018, Chapter 54 indicates that such funding may be subject to possible repayment.

⁶⁹ See page 6 of the "Guidance on 2018-19 Revised State Aid July 13, 2018" document prepared by the New Jersey Department of Education.

⁷⁰ See page 8 of the "Guidance on 2018-19 Revised State Aid July 13, 2018" document prepared by the New Jersey Department of Education.

⁷¹ See Certified Board Agenda dated July 19, 2018.

⁷² See Laura Winters' August 30, 2018 letter to the Ocean Executive County Superintendent of Schools. As of the date of this report Lakewood has not received a response from the Department of Education concerning the request to reduce the loan repayment for 2018-19.

Extraordinary Aid

Any discussion of SFRA must also include a discussion regarding Lakewood's funding for Extraordinary Aid. Extraordinary Aid funds special education costs over a certain threshold as a categorical aid. N.J.S.A. 18A:7F-55(b)(4). This aid is distributed as a reimbursement for extraordinarily high costs for special education resources. For 2018-19, \$195,000,000⁷³ is appropriated statewide for Extraordinary Aid which is the same as the statewide amount for 2017-18.⁷⁴ In 2017-18 the statewide appropriation for Extraordinary Aid was insufficient to fully reimburse all school districts in the amount required by this SFRA provision. When this occurs the Department of Education is required to reduce each district's reimbursement in the same proportion based upon the available appropriation amount pursuant to language in the annual Appropriations Act.⁷⁵ For 2017-18 Lakewood received \$5,525,414 which was only 50.12% of the \$11,024,372 amount the district was entitled to receive under SFRA.⁷⁶ This reduction of \$5,498,958 is another indication of how SFRA as applied has failed Lakewood. In 2016-17 the district received only 56% of the amount it was entitled to receive under SFRA.⁷⁷ Obviously, with the statewide appropriation for 2018-19 at the same level as 2017-18 it is likely that the district's Extraordinary Aid reimbursement may fall below 50% of the amount the district is entitled to receive under SFRA.

P.L. 2018, Chapter 67

This new law was approved on July 24, 2018. The main supporter of this new law was Senator Sweeney who stated "State aid will finally be distributed based on each district's property tax wealth, its ability to pay, enrollment changes, and the special needs of its schoolchildren, fulfilling the state Constitution's guarantee of a 'thorough and efficient' education for all schoolchildren." He further stated "This legislation guarantees that all future state aid increases from redirected adjustment aid or state appropriations will be allocated fairly to districts based on their proportional share of total underfunding" and "the elimination of the growth cap and the seven-year⁷⁸ phase-out of adjustment aid were the most important provisions of the law."⁷⁹

P.L. 2018, Chapter 67 made two changes to SFRA for 2019-20 through 2024-25 school years that could have impacted Lakewood. The most important change is that the Adjustment Aid formula was removed from SFRA permanently. In addition the State Aid Growth Limit was also permanently repealed. Beginning in 2019-20 school districts

⁷³ See Page B-45 of the FY2019 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget.

⁷⁴ See Page B-44 of the FY2018 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget.

⁷⁵ See Page B-56 of the FY2019 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget. The language states "In the event that sufficient funds are not appropriated to fully fund any State Aid item, the Commissioner of Education shall apportion such appropriation among the districts in proportion to the State Aid each district would have been apportioned had the full amount of State Aid been appropriated."

⁷⁶ See "2017-18 State School Aid Extraordinary Aid" printout dated 07/26/2018 prepared by the New Jersey Department of Education.

⁷⁷ See Yut'se O. Thomas, Director, Office of School Facilities and Finance, July 14, 2017 memorandum "2016-17 Extraordinary Special Education Aid."

⁷⁸ This includes the 2018-19 school year.

⁷⁹ See the July 30, 2018 edition of the Trenton Times, Page A08, Steve Sweeney's Guest Column.

will receive SFRA aid as a function of the amount of SFRA aid they received in 2018-19.⁸⁰ For 2019-20 the law requires that the amount of state aid Lakewood received in 2018-19 (the prebudget year) be increased or decreased based upon whether there is a negative or positive “State aid differential” between the 2018-19 aid received and the 2019-20 aid that will be calculated pursuant to SFRA. If the “State aid differential” for Lakewood is negative the 2018-19 amount would be increased. If the “State aid differential” is positive the 2018-19 amount would be decreased. In the case of Lakewood it is most likely that the “State aid differential” will be positive meaning that Lakewood's SFRA aid will be less than its 2018-19 SFRA aid. If this is the case Lakewood's SFRA aid amount for 2019-20 would be its 2018-19 amount less 13 percent of the "State aid differential." In my opinion it is likely that Lakewood's Equalization Aid under SFRA will be eliminated within two years (due to its substantially increasing Local Fair Share). For sake of argument and only to provide you with an example of how Lakewood's 2019-20 will be calculated if I am correct let's make the following assumptions: Lakewood's calculated Equalization Aid for 2019-20 is \$1,139,192 (one-half of the 2018-19 \$2,278,384 amount) and its categorical and transportation aids increase by 5% to \$22,246,431. This total of \$23,385,623 (\$1,139,192 + \$22,246,431) would be then subtracted from Lakewood's 2018-19 SFRA aid total of \$23,465,461 producing a positive “State aid differential” of \$79,838. Lakewood's 2019-20 aid then would be determined to be \$23,455,082 (\$23,465,461 less 13% of \$79,838 (\$10,379)) very nearly the same amount of SFRA aid as the district is receiving for 2018-19. Lakewood then would need 2019-20 additional funding of \$29,759,290 (\$28,182,090+\$1,566,821+\$10,379) to maintain the same level of T&E spending approved for 2018-19.

Again if you accept for the moment that Lakewood will soon lose all of its Equalization Aid then only its Categorical and Transportation aids will remain. If such aids were to increase annually every year by 5% (not likely) for the 2019-20 through the 2024-25 school years then by 2024-25 such aids would total under a fully funded SFRA to \$28,384,452 only \$4,925,153 more than the district is receiving for its Equalization Aid, Categorical and Transportation aids in 2018-19. Lakewood then would need 2024-25 additional funding of at least \$24,823,758 (\$28,182,090+\$1,566,821-\$4,925,153) to maintain the same level of “thorough and efficient” spending approved for 2018-19.⁸¹ Clearly, the state Constitution’s guarantee of a “thorough and efficient” education for all schoolchildren will not be fulfilled by SFRA in Lakewood at anytime within the next six years. P.L. 2018, Chapter 67 instead will make matters worse by eliminating any adjustment aid the district would have received in the future and failing to address any of the deficiencies in the law relating to Lakewood’s unique student demographics and the extremely rapid growth of the community⁸² since the state aid provided for the purpose of offering students a “thorough and efficient education” will be insufficient.

⁸⁰ See sections 3 and 4 of P.L. 2018, Chapter 67.

⁸¹ If the annual increase assumption for these aids is changed to 10% such aids would total to \$37,523,283, \$14,063,984 more than the aid amounts for 2018-19 and Lakewood would still require at least additional funding of \$15,684,927 to maintain the same level of T&E spending approved for 2018-19.

⁸² Lakewood's population increased by 70.14% since 2000 (102,682 for 2017/60,843 for 2000) and 10.6% since 2010 (102,682 for 2017/92,843 for 2010). This compares to 7.03% statewide since 2000 (9,005,644 for 2017/8,414,347 for 2000) and to 2.43% statewide since 2010 (9,005,644 for 2017/8,791,953 for 2000) United State Census Bureau Data available on their various websites.

Prospect of Receiving Future State Aid Advances

In this regard it appears to me that the state has backed itself into a corner with no escape. To date the only action the state seems statutorily able to take due to SFRA's obvious failure in Lakewood is to offer Lakewood increasing amounts of state aid advances. I am unaware of any present provision in the law that would allow the Department of Education to forgive the repayment of these loans. It appears that such action would require the approval of the Legislature.⁸³ So, Lakewood needs to repay the advance state aid funds back while receiving no more state aid over time than the district otherwise would which has a detrimental impact on the district's ability to provide "thorough and efficient" programs in future school years due to the need to divert funds that ordinarily would be provided for "thorough and efficient" programs to the repayment of the loans. Also, in my opinion by funding a "thorough and efficient" education with loans the state is placing the responsibility to fund a "thorough and efficient" for the budget year on Lakewood's taxpayers creating a possible tax-equity issue. By comparing the amount of the increase in the general fund school tax levy for 2018-19 (\$3,865,484) to the amount of the loan repayment in the 2018-19 school budget (\$3,009,189) you find that nearly 78% of the increase in the general fund school tax levy needs to be sent to the state leaving only 22% available for the provision of programs and services to Lakewood's students. Soon Lakewood's annual obligation for the repayment of the loans received to date will average \$4,684,495 (one-tenth of the total amount approved of \$46,844,951). So annually Lakewood's ability to provide its students with a "thorough and efficient" education will annually be diminished by that average amount.

Personally, I am baffled by the fact that after the provision of the state advance of \$28,182,090 for 2018-19 the state still wants to dismiss this case and maintain the status quo. The state is aware that SFRA has failed in Lakewood. Certainly, the two fiscal monitors are aware of this fact. Mr. Shafter stated "I think there's insufficient revenues to cover the required expenditures. Which is why we have advanced state aid" and Mr. Azzara also has affirmed that Lakewood has a revenue problem and he stated "They need more revenue." Providing discretionary annual state advances does not meet the Constitutional imperative to maintain a "thorough and efficient" educational system and is simply not viable in the long run. If were a fiscal monitor in Lakewood or still in the Division of Finance I would be seeking out or searching for ways to permanently resolve Lakewood's school funding problem and I would welcome any direction from the court. Perhaps, current Department of Education officials are simply unable to be proactive at this time or since Lakewood is involved the politics are not right and the state feels it has no other option at this moment except to resist. One has to wonder in light of SFRA's funding plan for the next six years what will happen if the state manages to have this case dismissed. SFRA will not miraculously provide Lakewood with allot of additional

⁸³ See the budget footnote language on page B-47 of the FY2019 Appropriations Handbook issued by the Department of Treasury's Office of Management and Budget, which states "Notwithstanding the provisions of P.L.2006, c.15 (C.18A:7A--54 et seq.) or any law or regulation to the contrary, in the event that a school district owes an amount greater than 50 percent of its annual general fund budget attributable in substantial part to loans made to the district from the "School District Deficit Relief Account" established pursuant to P.L.2006, c.15 (C.18A:7A--54 et seq.), such debt, as reduced by the liquidation of all available assets of the school district, **may be forgiven** upon the school district's merger with another district if the Commissioner of Education determines that such debt represents an impediment to consolidation, subject to the approval of the Director of the Division of Budget and Accounting." The language appears to relate to Hi Nella.

funding in the next six years if it is implemented as planned. If state aid advances are the state's only option then the prospects for Lakewood will be dismal. It is questionable if the state has the continuing ability to provide such discretionary loans in the future and provide "thorough and efficient" funding via this means. This possibility is a further indication that a permanent solution is needed for Lakewood's issues. If the state has some other plan or funding option for Lakewood I am curious to know what is the other plan or funding option.

Why SFRA is Failing in Lakewood

Simply put, the answer is Lakewood's unique student, property value and aggregate income demographics.

The first deficiency concerns how funding for special education programs and services is provided to school districts under SFRA. As described previously, two thirds of the formula established special education cost (not real cost) is funded by Equalization Aid (district wealth based aid for the portion of special education costs that are included within the school district's Adequacy Budget calculation) and one third by Special Education categorical aid (100 % state supported). For 2018-19 the formula established cost was calculated based solely upon the Lakewood school district's projected 2018-19 resident school enrollment of 5,997 students (only 5.84% of Lakewood's population (102,682 census bureau estimate for 7/1/17.⁸⁴) The cost amount is based upon 14.92% of the resident enrollment (895 students in Lakewood's case). Note that a count of the actual number of students requiring special education services is not used in the state aid determination.⁸⁵ In a typical K-12 school district the size of Lakewood the formula established cost amount would be based upon an enrollment approximating 15%-16%⁸⁶ of the district's population since the vast majority of the school age population would be enrolled in the public schools. Significantly for Lakewood, no consideration is provided in the formula for the fact that a school district is mandated by both Federal and State law to provide special education services for students in both the public school and non public schools. For this reason the SFRA Equalization Aid and Categorical Special Education Aid formulas do not accurately measure the cost of delivering educational content standards to special education students in Lakewood. The Lakewood School District is responsible for a student population base of approximately 30,000 additional students⁸⁷ not just the students that constitute the school district's resident enrollment. The district continues to provide all of the required special education services. This count deficiency must be addressed since it is highly likely that the school district's Equalization Aid in

⁸⁴ See United States Census Bureau's Quick Facts about Lakewood Township that are available on the Census Bureau's website.

⁸⁵ As discussed previously, New Jersey uses a census-based method for calculating state aid for special education. However, unlike the U.S. Department of Education's calculation that is based on *all* students attending any school within a district's jurisdiction, SFRA's calculation excludes students attending nonpublic schools even though school districts have an obligation to provide special education services to any of those students who have a disability. Although this difference is not critical for most other New Jersey school districts because of their low proportion of disabled nonpublic students, it is disastrous for Lakewood.

⁸⁶ I first looked at this issue in October of 2003 when I prepared my second report for Lakewood which I referenced on page 2 of this report. When comparing Lakewood to all of the other municipalities with a population of over 50,000 according to the 2000 census I found that Lakewood was unique in that its October 2002 resident enrollment (5,232.5) was only 8.67% of its population (60,352). This compares to an average resident enrollment percentage of 15.52% for the 28 other municipalities having a population in excess of 50,000.

⁸⁷ As of October 15, 2017 the nonpublic student enrollment count reported to the Department of Education by nonpublic schools via the NJ Smart system was 29,221.

2019-20 will be below the 2018-19 full funding amount or worse yet completely eliminated due to growth in Lakewood's wealth as it is calculated. If this turns out to be the case in 2019-20 the school district would receive only the Categorical Special Education Aid and no Equalization Aid will be provided to support Lakewood's special education costs.

The same deficiency impacts in the same manner the one third of the formula established special education cost that is funded by Categorical Special Education Aid.

The second deficiency concerns how a district's wealth is evaluated in the Equalization Aid formula. Despite a finding by the Joint Legislative Committee in its Final Report on Public School Funding Reform⁸⁸ that changes were needed in the way in which property wealth and income are calculated to address shortcomings in the then current statutory (CEIFA) formula which artificially inflated the apparent wealth of some communities, the SFRA Equalization Aid formula maintained the same local share formula as under CEIFA.⁸⁹ The Joint Legislative Committee recommended that a community's ability to pay (local share) be based upon per capita equalized valuation and income rather than by using the same calculation as in CEIFA. The Joint Legislative Committee indicated that "For districts with relatively large populations of senior citizens or other households without school-aged children and districts with relatively large populations of non public school students, this measure (enrollment-based) distorts the district's wealth. Calculating both measures per capita will more accurately reflect the wealth of the total community and therefore more accurately reflect the ability of the community to support public education." Since the local share formula in SFRA remains the same as the local share formula in CEIFA, Lakewood's local share (wealth) remains distorted⁹⁰ and the anomaly in the characteristics of the Lakewood remains unaddressed in the current SFRA formula. Certainly, Lakewood qualifies as a district with relatively large populations of non public school students. The negative impact of this anomaly is that it directly reduces the amount of Equalization Aid the district receives and has caused the general fund tax levy to be disproportionately high. Under the full funding scenario for the 2018-19 school year Lakewood's local share is \$111,534,172 which is an amount in excess of its general fund tax levy of \$100,827,483. Under a full funding scenario for the 2017-18 school year Lakewood's local share was \$102,034,106 a more than \$10.7 million increase in one year. The increase between 2017-18 and 2016-17 was more than \$9 million. If this magnitude of an increase happens again for 2019-20 then its within the realm of possibility that all of the district's Equalization Aid could be eliminated. In addition under SFRA a district that has a general fund school tax levy below its local fair share is by definition deemed to be below adequacy. Unless Lakewood can magically raise its general fund school tax levy next year to some amount above \$111.5 million it will again legally be below adequacy. The intention of SFRA was that all district's attain adequacy and be able to meet the

⁸⁸ Concerning the discussion that follows, See recommendation 5 on page 72 of the report which is available on the Department of Education 's website.

⁸⁹ A description of the CEIFA local share calculation can be found in the article about New Jersey in "Public School Programs of the United States and Canada" published by the National Center for Education Statistics for 1998-99 on pages 6 and 7 of New Jersey's article. It is available on the Center's website.

⁹⁰ This issue is discussed in my November 12, 2008 position paper that was provided to New Jersey Department of Education Officials.

constitutional requirement to provide a thorough and efficient education. Without even considering Lakewood's unique student demographics this will not occur in Lakewood.

What Can Be Done to Remedy SFRA's Deficiencies?

To begin with only the Legislature can fix SFRA as applied to Lakewood.⁹¹ Lakewood's problems with school funding are longstanding. I personally am aware that they date back to at least 1998-99, twenty years ago. Lakewood's issues with SFRA date to its inception. The underfunding of the original law in all school years to date, except the 2008-09 school year, has not helped but has exacerbated Lakewood's problem. The only specific action I am aware that officials of the New Jersey Department of Education can take in the future is to continue to provide state aid advances to Lakewood. To me this is not viable over the long run for Lakewood or the state. It is also discretionary and based upon subjective determinations of the level of funding needed to provide a thorough and efficient education that can be second-guessed which in my opinion will likely lead to more litigation in the future.

Regarding the two deficiencies I have identified I believe it is possible to fix SFRA as applied to Lakewood by permanently amending the law. The first deficiency could be addressed by adjusting the calculated special education cost within the Adequacy Budget calculation that is used to calculate Equalization Aid and adjusting the calculated special education cost that is funded by Categorical Special Education Aid. This could be done in a formulaic manner by basing the census calculation on perhaps 15%-16% of Lakewood's overall population as determined by the United States Census Bureau rather than on its projected enrollment. If Lakewood's Adequacy Budget was to change as suggested it would result in only to a small change in the statewide total of Adequacy Budgets while the equalized valuations and income information would remain the same resulting in only a very small change in the multiplier determination. The statewide loss of equalization aid for other districts would equal the amount that Lakewood's Adequacy Budget was increased since the total pot of Equalization Aid is fixed. The overall cost for equalization aid for the state would not change. The second deficiency could be addressed by revising the local share calculation for Lakewood to indicate that Lakewood's local share would equal its general fund local tax levy for the prebudget year. These changes would need to be implemented at the same so that both components of the Equalization Aid formula are impacted simultaneously. Also, such changes could be made quickly for 2019-20 via FY 20 budget footnote language if the current administration chooses while permanent amendments are considered. Of course Extraordinary Aid also needs to be fully funded.⁹² There may be more alternative ways that SFRA could be fixed but at this point it appears to me that the Legislature needs to be made fully aware that Lakewood's school funding problems are at the critical stage

⁹¹ I understand that the power to expend and appropriate monies from the State treasury lies exclusively with the Legislature and that school funding is a part of the State's annual budget process leading to the passage of the Annual Appropriations Act for the upcoming fiscal year. However, it is my opinion that the Legislature cannot decide to withhold a "thorough and efficient" education from Lakewood's students. A constitutionally adequate education is a fundamental right, for which a court can provide an appropriate remedy if such right is violated.

⁹² If Extraordinary Aid was fully funded for 2019-20 and these other actions were also taken for 2019-20, I estimate that Lakewood would receive approximately \$44 million of additional SFRA aid. Regarding Extraordinary Aid, the New Jersey Economic & Fiscal Policy Workgroup's Report, August 9, 2018, recommended on page 20 "Move toward full State funding and administration of Extraordinary Special Education."

and need to be addressed as soon as possible. I think this court could be helpful in this regard by providing direction for the Legislature.

What Can Lakewood Do?

All indications are that in recent years Lakewood has been preparing bare bones school budgets. There is no indication that Lakewood is presently making unwise spending decisions.⁹³ For 2018-19, Mr. Forney despite his comments about the projected deficit, was willing to "accept Lakewood's representation that it needs additional funds in the amount of \$28,182,090."⁹⁴

It has been suggested that Lakewood "could raise its school tax levy." But this is simply not the case. Lakewood's 2018-19 general fund school tax levy is the maximum amount the district is allowed to raise under the existing law. The state indicates "that compared to other high population school districts, Lakewood has one of the lowest equalized tax rates." I do not know if this is true or not.⁹⁵ However, even if this is true, Lakewood could not increase its 2018-19 general fund school tax levy to provide a thorough and efficient education beyond the present amount. A district can submit separate proposals to increase its general fund school tax levy under certain conditions if a review of the proposals indicates that the proposals "do not contain any programs or services necessary for the district to provide the opportunity for all students to achieve the thoroughness standards (NJSLS and CCCS) and do not contain proposed expenditures for items which are contained in the efficiency standards established when the amounts contained in the base budget for those items are greater than that contained in the efficiency standards" and "the proposals do not include any programs and services that were included in the prebudget year."⁹⁶ In addition N.J.A.C. 6A:23A-12.1 (a) says the following:

- "A proposal(s) submitted to voters shall not include any program(s) or service(s) necessary for students to achieve the New Jersey Student Learning Standards.
- A proposal(s) submitted to voters shall not include any capital outlay(s) necessary for health and safety reasons or that constitutes eligible costs of a T&E construction project.
- A proposal(s) submitted to voters shall not include any existing program(s) or service(s) included in the prebudget year except when documented to the executive county superintendent's satisfaction that reallocation is required to maintain or achieve T&E or that such programs and services are not necessary for T&E."

⁹³ According to the Taxpayers Guide to Education Spending 2018 published by the New Jersey Department of Education, Lakewood's 2017-18 Budgetary Per Pupil Cost of \$13,918 ranked seventeenth of the ninety-eight districts in its enrollment group when the ranking is from lowest to highest.

⁹⁴ See Mr. Forney's May 7, 2018 letter.

⁹⁵ I do know that "According to the New Jersey Data Book" Rutgers Center for Government Services, New Brunswick, New Jersey for 2016 two-thirds of the school districts in Ocean County had an equalized school tax rate that was lower than Lakewood's rate.

⁹⁶ See Page 15 of the "New Jersey Department of Education Budget Guidelines and Electronic Data Collection Manual 2018-19 Budget Statement prepared by the Division of Finance.

In my opinion Lakewood's general fund school tax levy is already disproportionately high relative to its resident enrollment and should not be increased beyond the capped level in the current law. However, this is an issue the legislature could evaluate if it sought to remedy Lakewood's school funding problem.

Other Revenue Sources

It has also been suggested that a discussion of the "thorough and efficient" education requirement and Lakewood "take into account any federal funding." In Abbott XX an as applied case relating to SFRA the Special Master⁹⁷ found that "SFRA was formulated to eliminate supplemental funding premised upon the theory the formula was constructed so that more than adequate resources would be available to the Abbott districts to meet the requirements for a thorough and efficient education. This is particularly so when it is considered SFRA was constructed without consideration of receipt of federal funds which are used to supplement, rather than supplant State aid."⁹⁸ Although the State agrees this court cannot consider federal aid when evaluating the constitutionality of SFRA, it urges the court it should and can consider federal aid as it addresses the question of supplemental funding." The Supreme Court agreed with the Special Master and only considered federal funds relative to the supplemental funding matter which was unique to Abbott districts. In its determination to let SFRA move ahead the Supreme Court agreed in part because they found that "The federal funds are not being used as a crutch against some structural failing in the funding scheme itself." This was a clear indication that it is inappropriate to "take into account any federal funding" and that federal funding cannot be used as a crutch to prop up the failing SFRA in Lakewood when discussing the "thorough and efficient" education requirement as it relates to Lakewood.

Another suggestion is that C.192 Nonpublic State Aid and C.193 Nonpublic State Aid⁹⁹ and perhaps the other nonpublic school aid programs should also be taken into consideration when discussing the "thorough and efficient" education requirement in Lakewood. However, it is clear that "These state-funded programs must be supplemental to Federal IDEA programs."¹⁰⁰ Since this is the case C.192 Nonpublic State Aid and C.193 Nonpublic State also cannot be used as a crutch to prop up the failing SFRA in Lakewood.

SFRA Funding System and the Thorough and Efficient Requirement

In the Abbott XX proceedings the state indicated that SFRA was a formula that would apply to all districts in New Jersey. In that case the Special master found "SFRA represented a methodical attempt to identify and determine the resources needed for all

⁹⁷ See Judge Doynne's March 24, 2009 Opinion/Recommendations to the Supreme Court.

⁹⁸ Here, the Special Master inserted a footnote which stated: "Abbott II, supra, 119 N.J. at 331-32, established reliance upon federal aid cannot satisfy the State's obligation to provide a thorough and efficient education. As such, this court indicated it could not consider the same when evaluating the constitutionality of SFRA. Although the State agreed this court is so limited, it reserved the right to suggest federal aid can and should be considered by the Supreme Court when evaluating the constitutionality of SFRA."

⁹⁹ C.192 provides nonpublic school students with auxiliary services such as compensatory education, English as a second language and home instruction. C.193 provides nonpublic school students with remedial services such as evaluation and determination of eligibility for special education and with limited related services that include supplementary instruction and speech-language services.

¹⁰⁰ See the New Jersey Department of Education's website.

students in the State of New Jersey to achieve the CCCS" and that "The State's laudable goal was to create a transparent, equitable, and predictable funding formula for all its students." SFRA's Equalization Aid, Categorical Special Education Aid, Categorical Security Aid and Transportation Aid formulas have not changed. For the 2016-17 and 2017-18 school years fully funded versions of the law would not have avoided state intervention to provide the district's students a "thorough and efficient" education. For 2018-19 SFRA is fully funded in accordance with the latest version of law (a version that remains intact for the 2019-20 through 2024-25 school years). For 2018-19 it is clear that SFRA as applied to Lakewood's particular set of circumstances does not provide the district's students a "thorough and efficient" education. For 2019-20 through 2024-25 school years the latest version of SFRA even if it remains fully funded (the states track record on this is not good) will not provide the district's students a "thorough and efficient" education. Since the formulas in the latest version of SFRA are not new and remained unchanged from the original law, it is clear that the formulas (based upon Lakewood's experience with SFRA for the 2016-17 through 2018-19) do not work when applied to Lakewood's facts and circumstances (its unique student and other demographic information) and will never work. SFRA as applied is unconstitutional since it alone cannot provide Lakewood with sufficient revenues to enable the district to provide a "thorough and efficient" educational program as constitutionally required within any reasonable timeframe and Lakewood will require additional funding outside of SFRA so its students can have the necessary resources for them to achieve the CCCS. The SFRA funding shortfall of \$28,182,090 for 2018-19 is substantial meaning SFRA's inability to provide the necessary revenues needed for a "thorough and efficient" education in Lakewood has worsened. The deficiency in 2018-19 SFRA funding is substantial, an amount that is more than the total amount of SFRA aid received by the district.

Overall Funding System and the Thorough and Efficient Requirement

Due to the failure of SFRA in Lakewood for the 2014-15 through 2018-19 school years the state has filled the gap between the allotted SFRA funding and the overall necessary funding required for the district's students "thorough and efficient" education by approving state aid advances of various increasing amounts. This administrative approval process is discretionary, subjective and unpredictable. Does relying on an overall funding approach, that is dependent upon state aid advances, meet the constitutional requirement to maintain a system of funding for Lakewood's students that will guarantee such students their required "thorough and efficient" education? In this case I do not think this standard is being met. In my opinion such overall funding needs to be assured. It must be continuing, not discretionary, not subjective, should be formulaic and predictable. The legislative findings regarding SFRA state that "school districts must be assured the financial support necessary to provide those constitutionally compelled educational standards....[not] an uncertain, unpredictable, and untenable funding situation for the State and school districts alike." Lakewood's need to rely on the provision of a "thorough and efficient" funding level via a subjective, discretionary administrative approval process continues to place the district in an untenable funding situation that SFRA was supposed to address. In addition the state aid advance process, which has become necessary, provides only temporary relief for Lakewood since the state aid advance funds need to be paid back.

As one of the author's of the Quality Education Act (QEA) I am fully aware that in Abbott III, the Supreme Court found that "because the QEA's design for achieving parity depends fundamentally on the *discretionary* action of the executive and legislative branches....the statute fails to *guarantee* adequate funding for those districts." Therefore it is my opinion that the constitutionally required level of "thorough and efficient" funding must be guaranteed and cannot be discretionary.

The Bacon Court said that the "constitution does not require relief every time the slightest deviation from the 'thorough and efficient' requirement is found, or where there is clear evidence that a deficiency is being appropriately addressed and sufficient progress is being made toward its correction." But there is no longer a slight deviation in Lakewood. The state intervention in the form of the state aid advances is proof of this especially for 2018-19. There is no evidence whatsoever that the funding deficiency in Lakewood is being appropriately addressed. Instead the state is simply applying a temporary bandage to the longstanding revenue problem in Lakewood.

Action Required

In my opinion, as unlikely as it may seem, at a juncture like this, the parties in this case should settle the case. As they look ahead to the 2019-20 school year, it is not in the best interests of either party for this case to continue with an indefinite ending point. The state should acknowledge that SFRA has failed in Lakewood and can not work in Lakewood in the future and recognize that it has backed itself into a corner by relying on its usage of the state aid advance funding to provide a "thorough and efficient" education in Lakewood. As I write this report it is only seven to eight months from now that the funding for Lakewood's 2019-20 school budget will need to be finalized. If this case is dismissed or continued than the same process that was in place for the 2014-15 through 2018-19 school years will most likely remain intact. The state will then need to provide Lakewood with another state aid advance of at least \$30 million and most likely in the range of \$43-\$45¹⁰¹ million so that Lakewood can balance its 2019-20 school budget to once again enable the district to provide a "thorough and efficient education." The state could possibly avoid a finding that SFRA is unconstitutional as applied in this instance while its phasing in its plan for full funding for the other districts in the state. Appropriate and timely funding for Lakewood for the 2019-20 school year could readily be recommended and incorporated by Governor Murphy's administration into the FY20 state budget via budget footnote language while a permanent legislative solution is being worked out with the legislature.¹⁰² Any settlement must include a remedial plan that achieves results quickly. Any potential settlement agreement would need to at least address Lakewood's funding for 2019-20.

I do not know this court's timelines if this case continues and if the court and the Commissioner would be able to make their decisions so that such decisions could impact the 2019-20 school year. However, I am inclined to think that this will not be the case. If

¹⁰¹ The amount could be lower by perhaps \$5.5-\$6 million if Extraordinary Aid is fully funded next year.

¹⁰² I understand also that any recommendation incorporated into the state budget via budget footnote language must be approved by the legislature.

a subsequent appeal is made by either party then obviously the timeline for final resolution of this matter clearly is well after the 2019-20 school year. This is obviously detrimental to the interests of Lakewood and its students. Both parties in this case need to consider that the heart of this case is in reality Lakewood's students and that their interests should be foremost. The parties need to consider that time passes quickly and that for Lakewood's students the solution clock is ticking.

What This Court Needs to Do¹⁰³

Absent a settlement it appears that this court will need to make its findings. In my opinion the following facts should be obvious to the court:

1. Lakewood's Equalization Aid is diminishing and will soon be eliminated.
2. Full Funding of SFRA formula aids alone for the 2019-20 through 2024-25 school years will not provide Lakewood with the adequate revenue it needs to provide a "thorough and efficient" education.
3. Under SFRA Lakewood's school budget, absent state aid advances, remains below adequacy.
4. Unless some other alternate statutory authority exists or comes into existence during this time period, the state will still need to provide additional discretionary, subjective, and unpredictable state aid advances to Lakewood.
5. Continued usage of the state aid advance (loan) process to fund a "thorough and efficient" education is not viable for Lakewood since the loans need to be repaid.
6. The repayment of the loans should be forgiven.
7. The SFRA formula aid provisions are unconstitutional as applied to Lakewood.
8. The state has a continuing constitutional obligation to provide adequate funding for the provision of "thorough and efficient" educational programs to pupils in Lakewood
9. The existing state aid advance process does not provide certainty of funding and does not meet the constitutional standard regarding the maintenance of a "thorough and efficient" educational system for Lakewood's students.
10. SFRA Extraordinary Aid for Lakewood has not been fully funded.
11. SFRA Extraordinary Aid for Lakewood needs to be fully funded.

Hopefully, these facts will enable this court to direct and prescribe the remedial actions required to address Lakewood's school funding problems arising from its unique circumstances.

Conclusions

Professor Tractenberg was correct when he stated that "It is long past time to fully address the merits of petitioners' fundamental constitutional claims" and "the State seems to be using the Office of Administrative Law and its important processes in a cynical

¹⁰³ I believe that the judiciary is vested with the ultimate power to determine the sufficiency of the legislative actions to date relative to the education clause in our State constitution. Unlike the respondents, I do not believe the respondents are immune from suit nor do I believe that the petitioner's have failed to present a justiciable case.

manner to delay or evade the Commissioner of Education's constitutional responsibilities to assure all New Jersey students with a "thorough and efficient" education and system of free public schools." I am admittedly not an attorney, but it was my expectation that the State would at long last file substantive responses regarding the issues in this case. Unfortunately, in my opinion this was not the case and the State is still seeking a way to avoid addressing the constitutional claims raised Lakewood's students. My experience with our State's extensive school funding litigation has made me a firm believer in the legal maxim that "justice delayed is justice denied." In this case at present, as far as I can tell from their answer to the second amended petition, the State is denying at least the following without any supporting evidence or arguments that SFRA is the legislative vehicle for implementing on a statewide basis the "thorough and efficient" constitutional clause, that the adequacy budget calculation is the primary metric for determining whether a district's students have sufficient funding under SFRA for them to receive a "thorough and efficient" education, that SFRA cannot rationally be provided under the provisions of SFRA, that the district has a revenue problem rather than a spending problem, that the SFRA funding is inadequate by itself to provide Lakewood's student's with a "thorough and efficient" education. The State appears to be claiming that petitioners' constitutional right to a "thorough and efficient" education can depend upon periodic discretionary action by the executive branch and that the recent statutory amendments to SFRA that eliminated adjustment aid have not already begun to reduce Lakewood's future state aid. Apparently, the State thinks that the petitioner's claims should be simply dismissed in part because "respondents acted at all times relevant hereto with good faith." All I can do at this point is hope that this court will not award the State for its behavior.