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VIA EMAIL

January 24, 2019

Honorable Susan M. Scarola, ALJ
Office of Administrative Law
Quakerbridge Plaza, Building 9
Mercerville, NJ 08625-0049

Re: Leonor Alcantara et. al. v. David Hesper et al.
OAL Docket No: EDU 11069-2014 S
Agency Ref. No. 156-6/14

Dear Judge Scarola:

As a participant in this matter, I am writing yet another letter to your Honor, this one in anticipation of the conference call scheduled for this coming Monday, January 28 at 2:30 pm. My concerns about that call and its procedural aftermath relate to the recent email exchange between Arthur Lang, lawyer for the petitioners, and Jennifer Hoff, lawyer for the state respondents, regarding the witnesses the State is proposing to present and what the State is proposing to tell the petitioners, the participants and your Honor about the testimony of those witnesses—and when it proposes to provide that information.

In my view as a participant whose role is to assist the parties and your Honor in the effective and efficient adjudication of this matter, I continue to be mystified by the State's unwillingness to reveal its theory of the case and how its proposed witnesses will seek to prove the viability of that theory. To treat that as a black hole into which no one but the State's lawyers can venture until the proposed testimony is actually presented, or until only shortly before that, is to deny the petitioners' lawyer a meaningful opportunity to object to any of the State's proposed witnesses and, effectively, to deny your Honor the ability to control the pace and relevance of the proceedings.

Let me be more specific--if my understanding of the issues currently before your Honor is accurate and sound, there are only two immediate issues:

1. Whether the Lakewood School District (LSD) can provide its students with a thorough and efficient education (T&E) with funding available pursuant to the formulas contained in the School Funding Reform Act of 2008 (SFRA); and
2. Whether additional funding provided to LSD as advance state aid pursuant to NJSA 18A:7A-56 can be deemed a constitutionally sufficient means of enabling LSD to meet T&E requirements for its students.

The first is a question of fact and the second is a question of law. If the second question is answered in the affirmative, then a third question, one of fact, emerges—can LSD provide its students with T&E through a combination of SFRA formula funding plus advance state aid. I submit that that third question is not yet before this tribunal and that it may not be necessary to reach it at all. Indeed, in my judgment, it will prove unnecessary because the two questions currently before your Honor should almost certainly both be answered in the negative.

Thus, the only relevant fact witnesses now are those whose testimony bears on the first question and I think there may only be three or four of them.

The first is the Commissioner of Education, or someone who can testify definitively about the basis of the Commissioner's annual certifications to the State Treasurer for each of the last four school years. After all, as required by the statute, the certifications attest to the fact that advance state aid pursuant to NJSA 18A:7A-56 is necessary for LSD to be able to provide its students with T&E. In other words, without such aid LSD cannot provide its students with T&E, the core of petitioners' constitutional claim.

The second is Glenn Forney, now the Deputy Assistant Commissioner of Finance at the New Jersey Department of Education (NJDOE), but for most of the relevant time the executive director of NJDOE's Office of State Monitors. Presumably, it was Mr. Forney who sent first Michael Azzara, and then David Shafter and Theresa Pollifrone-Sinatra, to LSD to be state monitors and assistant monitors, to oversee their work and to determine whether they should continue to function in the district.

The remaining state witnesses might be current state monitors Michael Azzara and David Shafter, who can testify most authoritatively about LSD's fiscal situation for the past four + years during which they have been in place.

Interestingly, none of these potential state witnesses have found their way onto the State's lengthy lists of at least 23 potential witnesses provided to Mr. Lang and to Mr. Inzelbuch and myself by letters dated January 12 and January 25, 2018. The State's letters make reference to a November 18, 2016 letter that also dealt with potential State witnesses, but I could not locate that letter. By the way, I am hard-pressed to understand what most of the listed witnesses will testify about unless it is to call into question either the correctness of the Commissioner's four annual certifications or the effectiveness of the state monitors by testifying that SFRA funding is in fact sufficient to enable LSD to provide its students with T&E.

To sum up, my hope regarding the upcoming conference call continues to be that your Honor will act definitively to assure that whatever witnesses the State presents and whatever theory of the case it seeks to advance through them are responsive to the case as it has evolved, and that petitioners, participants and your Honor are informed well in advance as to what witnesses the State proposes to call and, in sufficient detail, what they will testify about.

I am encouraged by your Honor's recent ruling on the State's latest motion to dismiss that this matter may, at long last, be on a more effective and efficient trajectory. I hope that our Monday conference call will build upon that developing foundation.

Respectfully submitted,

Paul L. Tractenberg, Participant

cc: Arthur H. Lang, Esq.
Geoffrey N. Stark, Esq.
Jennifer Hoff, Esq.
Michael I. Inzelbuch, Esq.

