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VIA EMAIL

June 6, 2018

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

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

Dear Judge Scarola:

I am writing to you yet again, in lieu of filing a formal brief--this time in connection with the State's latest motion to dismiss the petition in this matter. I believe that your honor should not only deny that motion, but also should move expeditiously to submit a recommended decision to the commissioner of education.

As I have repeatedly stressed, if the legal admonition that "time is of the essence" applies to any case, it applies with a vengeance here. The constitutional rights of more than 6,000 Lakewood students, most of them low-income children of color, hang in the balance. Every day that these students are denied their fundamental constitutional right to a thorough and efficient education, is a day lost to them forever. And yet, almost four years after the filing of the petition, this matter still lingers in the Office of Administrative Law. That adds up to more than 700 lost school days, almost 30% of their entire public school educational careers.

Moreover, bizarrely, in these almost four years the State has never submitted an answer to the students' petition so we really don't even know what the State's ultimate position is. Instead, the State's lawyers have used every technique they can think of to obfuscate, misdirect, distract and delay. On September 2, 2014, they filed an unsuccessful motion to dismiss, which ALJ Kennedy denied on July 24, 2015, almost 11 months later. In his decision, the ALJ stated that the matter was properly before the tribunal to establish a complete record and to exhaust administrative remedies. The State's lawyers even had formally objected to my participation in the matter on totally frivolous grounds, which ALJ Kennedy rejected, but the legal back-and-forth consumed almost two months.

Now, yet again, the State is moving to dismiss the petition based on what I believe is an effort to undermine the petitioners' case without directly and fairly addressing its core elements.

Among other techniques, the State, in its 57-page long brief, seeks to cherry-pick comments made by the petitioners' witnesses to argue that, because there may be some positive educational elements in the Lakewood schools, the petitioners' case must fall. Clearly, the objective of the State's lawyers is to try to punch holes in the petitioners' legal theories and evidence without ever offering definitive answers that reflect the State's actual positions.

Had the State submitted an answer to the petition, we might know more about how the State views the situation. Absent an answer, here is a sequence of questions designed to elicit its views and to provide a framework for your consideration of the State's latest motion to dismiss the four-year old petition:

1. Is it true that Lakewood's demographic profile is unique in the State?
2. Is it true that Lakewood's demographic profile (with more than 31,000 nonpublic school students, about five times as many the district's public school students) results in as much as 40% of the Lakewood school district budget being allocated to transportation, special education and other costs of the nonpublic school students?
3. Is it true that the adequacy budget provided for by the School Funding Reform Act of 2008 ("SFRA") represents the statutory determination of the funding level required to enable students to have the requisite educational opportunity to achieve the Core Curriculum Content Standards, the constitutional definition of a "thorough and efficient" education?
4. Is it true that Lakewood public school students have as much as 40% below the adequacy budget level available for their education?
5. Is it true that the New Jersey Supreme Court in *Abbott v. Burke* several times explicitly rejected the State's argument that "money doesn't matter" in determining whether students are receiving a constitutional education?
6. Is it true that the State's own fiscal monitors in Lakewood have stated publicly that the district has a revenue problem not a spending problem?
7. Is it true that Lakewood has annually contributed its Local Cost Share pursuant to SFRA, up to the 2% statutory cap?
8. Is it true, therefore, that should additional funding be required it should be in the form of state aid?
9. Is it true that the "emergency loans" or "advance state aid" that the State has been providing Lakewood bespeak a state power and duty to provide Lakewood with special funding beyond the technical requirements of SFRA?

10. Is it true that there is no conceivable circumstance under which the Lakewood school district could repay the State’s “emergency loans” or “advance state aid” and that, therefore, they actually represent additional state aid?
11. Is it true that the commissioner has broad power and duty to do what is required to assure that New Jersey’s students receive a constitutional education even in respects not specifically authorized by the legislature and that this power and duty can extend to fiscal matters?¹
12. Is it true that everything about the Lakewood school district suggests that it is the proverbial square peg in SFRA’s round hole and that the ultimate solution is for Lakewood’s unique status to be recognized by the State and reflected in its annual state aid allocation?²

Respectfully submitted,

Paul L. Tractenberg, Participant

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¹ In *Jenkins v. Township of Morris School District and Board of Education*, 58 NJ 483, 504 (1971), the New Jersey Supreme Court stated, in a unanimous opinion, that “The Commissioner has been appropriately charged with high responsibilities in the educational field and if he is to faithfully discharge them in furtherance of the State’s enlightened policies he must have corresponding powers The Legislature has here granted them in broad terms and it would disserve the interests of the State to permit their administrative narrowing which in effect represents not only a disavowal of power but also a disavowal of responsibility.” In that case, the commissioner had taken the position that he lacked the power to order the merger of two school districts for racial balance purposes because there was no explicit legislative grant of such power. The court ruled that he nonetheless had the requisite power.

² In a recent report commissioned by the Lakewood Board of Education, *New Jersey School Funding Impact on the Lakewood Public Schools: Focus on Special Education* (Feb. 1, 2018), the author, Sue Gamm, Esq., who has had 46 years of relevant experience, ended her introduction with the following statement: “Based on my personal experience and knowledge, I have neither observed nor heard about any school district having the distinctive demographic characteristics of the Lakewood School District, which have led to the fiscally severe consequences of a state school funding scheme that was not designed with Lakewood’s characteristics in mind.”