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VIA EMAIL

July 3, 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 Hespe et al.  
OAL Docket No: EDU 11069-2014 S  
Agency Ref. No. 156-6/14

Dear Judge Scarola:

As a participant in the above-captioned case, I am submitting this letter in anticipation of next week's evidentiary hearings. Since I am out of state, I will be unable to attend.

**Introduction**

I have been arguing, literally for years, that this case is a simple and straightforward one. Actually, it has become simpler and more straightforward in recent times. It is, therefore, inexplicable to me that the petition was filed more than five years ago with the Commissioner of Education and referred to the Office of Administrative Law, and we have yet to receive even a recommended ALJ decision for the Commissioner.

**Issues to be Addressed**

As I have argued repeatedly, there are only two linked issues in this case:

1. Does the School Funding Reform Act of 2008 (SFRA) provide the Lakewood School District (LSD) with adequate funds to enable it to provide its approximately 6,000

public school students, most of them low-income Latino and Black, with the constitutionally required thorough and efficient education (T&E)?

2. If it does not, are there constitutionally acceptable ways in which the State can provide LSD with sufficient supplemental non-SFRA funding?

The State has periodically sought to raise a third issue—that any denial of T&E to LSD students is a function of misspending and mismanagement by LSD. Indeed, the State has raised that argument virtually since the start of New Jersey’s longstanding school funding litigation in 1971 and the state supreme court has repeatedly ruled that it is a non-starter. That must especially be the case in Lakewood since the State has had several fiscal monitors in place for years, overseeing and even controlling the district’s expenditures. As your honor knows, the State’s then senior fiscal monitor, Michael Azzara, famously stated at a videotaped public meeting in Lakewood that **the district’s problem was a revenue problem not a spending problem.**

### **Inadequacy of SFRA Funding**

As to the real issues in this case, there can be no dispute that SFRA funding for LSD is inadequate to enable it to provide its students with T&E. To conclusively demonstrate that, your Honor need go no further than the Commissioner’s annual certifications to the State Treasurer pursuant to N.J.S.A. 18A:7A-56. The latest of those certifications, dated July 1, 2019 just two days ago, sought \$36,033,862 in “advance state aid” to LSD because **“The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.”** (Emphasis added) Again in the very next paragraph, the commissioner reiterates that **“The amount requested for the advance of state aid is needed to allow the district to meet the needs of its students and provide a thorough and efficient education.”** (Emphasis added)

### **The Failure of Advance State Aid or Other Unpredictable, Uncertain and Discretionary State Funding to Satisfy Constitutional Requirements**

One of the central, cardinal constitutional principles of *Abbott v. Burke* is that, to satisfy T&E, state funding must be predictable and certain, not subject to periodic discretionary action. Advance state aid clearly runs afoul of that principle. Every year, but especially this year, the circumstances surrounding the Commissioner’s certification of advance state aid to LSD demonstrate why the New Jersey Supreme Court adopted that principle.

LSD was not assured until July 1 that it would have the additional funding designed to enable it to provide its students with T&E. Until then, it—and its students—were on a devastating roller coaster ride with the Governor including more than \$30 million of additional funding for LSD in his proposed budget and the Legislature removing it. That is demoralizing to LSD’s staff and

students, and precludes the district from engaging in any serious, let alone long-term, educational planning. This not only runs afoul of the state constitutional requirement of T&E for students, but, in all likelihood, also of the explicit constitutional requirement that the State operate “an efficient system of free public schools.”

Beyond that, using the vehicle of advance state aid, rather than an outright grant, to direct additional state funding to LSD has a substantial negative effect on LSD’s fiscal circumstances. Because advance state aid is really a loan against future state aid, the State is giving with one hand as it simultaneously takes back with the other. As the Commissioner’s July 1, 2019 certification to the State Treasurer explicitly indicates, LSD must repay, through automatic deductions from future state aid, the full amount of the advances within ten years, and may even be required to pay interest on the unpaid balance. With this school year’s advance of \$36,033,862, LSD’s indebtedness to the State exceeds \$82 million, less any repayments already been made.

The use of advance state aid, repayable through future state aid, as a stopgap funding mechanism for LSD also has another deleterious effect. As Melvin Wyns, the former director of the Department’s Division of Finance, has testified in this proceeding, LSD’s state aid will decline year-by-year until eventually its annual repayment obligations to the State will approach, if not equal, its total state aid. At such point, LSD, in effect, will have to function without any state education aid.

### **Conclusion**

It has seemed clear from the start of this matter that the only constitutionally responsive and responsible way to deal with LSD’s unique demographic circumstances, and the attendant fiscal consequences, is by amending SFRA. The more time that elapses and the more evidence that accumulates the clearer that reality becomes. It is time for your Honor to recognize that reality and to forward your recommended decision to the Commissioner without further delay.

I understand that neither you nor the Commissioner have the authority to amend SFRA or to require the Legislature to do so, but ALJ Steven Lefelt played a seminal role in *Abbott* by providing the evidentiary basis for the Supreme Court to rule on the constitutionality of the state’s school funding laws. You can do the same here. The difference is that, as I have pointed out above yet again, your task is far simpler than was ALJ Lefelt’s because the Commissioner has repeatedly certified that SFRA funding is not sufficient for LSD to provide its students with T&E and that is all this case is about.

Respectfully submitted,

Paul L. Tractenberg, Participant

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