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VIA EMAIL

August 17, 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 in response to Michael Inzelbuch's August 14, 2018 letter to your Honor and urging that you reject without delay his highly irregular request that you permit the Lakewood Board of Education to become a formal party at this late date. All the requested action can accomplish is to further complicate and delay a process that already has been too procedurally complicated and too outrageously delayed.

To provide your Honor with the Cliff Notes version of the long and complex history of the Lakewood School District's relationship to this litigation, here are summaries of the five chapters in this saga:

Chapter 1: The State moves to dismiss the petition because the Lakewood School District, allegedly a necessary or indispensable party, was not joined

On June 29, 2015, after briefing and oral argument, ALJ Kennedy denied the State's motion to dismiss. His order discussed in detail and rejected the State's argument that the Lakewood School District was a necessary or indispensable party. He also rejected the other two grounds for dismissal the State advanced. In doing so, he made reference to three prior New Jersey school funding cases. In *Robinson v. Cahill*, 118 N.J. Super. 223 (1973) and *Abbott v. Burke*, 119 N.J. 287 (1990), ALJ Kennedy observed that "the only plaintiffs/petitioners have been students and their parents." By contrast, in *Bacon v. N.J. State Dept. of Education*, 398 N.J. Super. 600 (App. Div. 2008), the State had moved to dismiss the petition for lack of standing when only districts,

and not students and their parents, were the petitioners. As a result, students and parents were added as petitioners.

#### Chapter 2: Student and parent petitioners sought the participation and support of the Lakewood School District

In the early days of this matter, counsel for the petitioners made clear that Lakewood's public school students would benefit from the cooperation and support of their school district and board of education. By formal board vote, however, the Lakewood School District chose not to participate in or support the petition filed by its students and their parents.

#### Chapter 3: The Lakewood School District sought to actively undermine the petitioners' presentation of their case in February 2018

When the petitioners sought the testimony, affidavits and relevant data from school district officials, including the superintendent, business manager, state monitors and contract consultants, the Lakewood School District not only failed to cooperate, but, upon information and belief, actively resisted. The result was that petitioners had to seek an order from superior court judge Mary Jacobson requiring school district officials to cooperate with the petitioners.

#### Chapter 4: Early in the February 5, 2018 evidentiary hearing in this matter, Mr Inzelbuch "renewed" a motion to have the Lakewood School District enter the case as a party rather than a "participant" so that it could present its own evidence

The lawyers for both parties opposed the Inzelbuch motion. DAG Geoffrey Stark agreed with petitioners' counsel Arthur Lang that the result of granting this motion might well be delay. Additionally, Stark described the timing of the motion as "suspect in the sense that it's made as we're going on the record in the hearing." (Transcript, February 5, 2018 hearing, at 25). Stark also referenced the fact that Inzelbuch had entered the case six months earlier, in August 2017, and did not make a motion for the Lakewood School District to become a formal party at that time or at any time during the ensuing six months. Your Honor then said the following on the record:

"And basically the law of the case so far has been that Lakewood comes in as a participant. I might have decided it differently a long time ago, but I'm not going to change it at this juncture, so you can participate, Mr. Inzelbuch. If there's anything you feel strongly about, you can certainly talk to Mr. Lang or Mr. Grossman." (Transcript, February 5, 2018 hearing, at 22).

#### Chapter 5: In an August 14, 2018 letter, more than six months later and on the eve of the long-scheduled August 20 oral argument, Mr. Inzelbuch requests that" the Lakewood Board of Education/district be permitted to become a party to this action"

Mr. Inzelbuch offers no serious substantive argument for why your Honor should reverse the position you took on February 5, 2018, but only reiterates the points he made then, including gratuitous and unfounded criticism of both petitioners' counsel and a prior ALJ.

You should deny Mr. Inzelbuch's 11<sup>th</sup> hour request immediately. As I will argue on Monday, you also should:

- Deny the State's latest motion to dismiss;
- Order the State to file an expeditious and substantive answer to the as yet unanswered 50-month old petition;
- Determine whether the State's answer raises any significant issues warranting an evidentiary hearing at which the State presents its evidence and petitioners have the opportunity to cross-examine and challenge it; and
- At long last, produce as soon as possible for the Commissioner of Education a recommended decision based on the record you have compiled.

Respectfully submitted,

Paul L. Tractenberg, Participant

cc: Arthur H. Lang, Esq.  
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