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Via regular mail and fax to (609) 689-4100

Honorable John S. Kennnedy, ALJ
Office of Administrative Law
9 Quakerbridge Plaza
P.O. Box 049
Trenton, NJ 08625-0049

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

Dear Judge Kennedy:

Please accept this letter in lieu of a more formal brief as my response to the Petitioners' motion for summary judgment or summary decision in the above-captioned case. I have served the attorneys for the parties by electronic mail and fax.

My letter has two sections: the first reviews the lengthy delays that already have occurred in reaching the merits of the Petitioners' weighty constitutional claims and what occasioned most of those delays; and the second suggests that the Petitioners' pending motion for summary judgment or summary decision is the best vehicle for assuring that the merits are reached expeditiously without further extended delay. I address these issues from my perspective as a participant, or amicus curiae, in this proceeding.

LENGTHY DELAYS IN REACHING THE MERITS OF THE PETITIONERS' CONSTITUTIONAL CLAIMS

Exactly one year ago today, in my conclusion to a letter brief responding to the State Respondents' motion to dismiss the petition, I wrote the following:

> This case involves a single district, unique in New Jersey and possibly in the nation. The state school funding law, the School Finance Reform Act of 2008, and related administrative actions, such as the District Factor Grouping assigned by the Commissioner to virtually every school district in New Jersey but not to Lakewood, simply do not reflect the Lakewood School District's unique demographic and educational circumstances. Many cases raise the specter of a slippery slope; this one does not. It is truly sui generis.
>
> If the Lakewood School District problem is not dealt with now, however, it will quickly become far worse. The projected enormous population growth in Lakewood over the next 15 years, mostly in the nonpublic school sector, will make today's problems look trivial by comparison.
>
> But the reason to act now is not merely pragmatic; it is because precious constitutional rights of children are at stake. The 5,700 public school students in the Lakewood School District will have only one opportunity in their lives to benefit from a thorough and efficient education, and the time is now. If they are not provided with what is theirs by constitutional command, they will forever be the victims of a system that just did not care enough about them.

Despite these admonitions, however, a year later, with the number of Lakewood public school students whose constitutional rights are in jeopardy having increased to more than 6,000, we seem at risk of spending additional years dealing with procedural minutiae rather than the

weighty constitutional concerns involved here. The Petitioners' motion for summary judgment seems the best way to enable this tribunal to address those concerns.

If left to their own devices, the lawyers for the State Respondents seem to have unbounded capacity to find ways to try to avoid the real issues, and delay for delay's sake is certainly a common legal strategy. In this matter, however, the State Respondents have an undeniable, clear and longstanding responsibility to assure that the constitutional rights of its young students residing in Lakewood are vindicated.

Without needlessly belaboring the point, I think it is important to remind this tribunal of the delays that have already occurred in this matter. The Petitioners filed their amended petition on July 7, 2014, more than 21 months ago. The State Respondents' response on August 5, 2014 was to seek a 25-day extension and then, on September 2, 2014, to move to dismiss the petition on the basis of three claims wholly lacking in substance. Yet, the State Respondents' motion to dismiss was not denied by this tribunal until July 29, 2015, almost 11 months later. That delay partly was a result of the State Respondents' inexplicable objection to my participation in this matter that consumed almost two months before your honor issued an order granting my motion to participate on March 11, 2015.

Even after this tribunal's July 29, 2015 denial of State Respondents' motion to dismiss, State Respondents sought to delay matters by seeking, on August 5, 2015, a 10-business day extension of the deadline for requesting interlocutory review of that order, a request never made. This prompted me to express concerns about the State Respondents' incessant delays in an August 6, 2015 letter to the Director of the Department of Education's Bureau of Controversies and Disputes on which your honor was copied. In that letter, I said the following:

> In papers filed with Judge John S. Kennedy in response to the State's

motion to dismiss, as well as in oral argument before him, I raised deep concerns about the negative effects on Petitioners' constitutional rights of long delays in reaching the merits of their claims. If Petitioners are proven right that they are being denied their constitutional due, then every extra week, month or year they have to wait for their vindication is a period of time they can never retrieve.

I would hope that the State, which is charged with ultimate constitutional responsibility for assuring those rights for all students, would be as anxious as the Petitioners to have this issue resolved expeditiously.

Yet, unfortunately, that does not seem to be the case. More than eight months after my August 6, 2015 letter, the State Respondents are still finding ways to delay having this tribunal reach the merits of the Petitioners' constitutional claims, now by needlessly complicating the discovery process. State Respondents have sought to do that in two ways: first, by failing to respond for more than three and a half months to Petitioners' elaborately detailed and documented December 28, 2015 request for admissions; and second, by propounding initial interrogatories and requests for the production of documents, which are largely irrelevant to the merits of Petitioner's claims. Indeed, most of the interrogatories and document requests seem more likely designed to harass and intimidate the petitioners than to illuminate the merits of this matter.

PETITIONERS' PENDING MOTION FOR SUMMARY JUDGMENT OR SUMMARY DECISION IS THE BEST VEHICLE FOR ASSURING THAT THE MERITS ARE REACHED EXPEDITIOUSLY WITHOUT FURTHER EXTENDED DELAY

I fear that this obstruction and obfuscation by the State Respondents will delay the

meaningful adjudication of the Petitioners' weighty constitutional claims for months or even years unless this tribunal takes a strong and decisive position. The Petitioners' motion for summary judgment invites just such a response. At its core, such a motion requires the tribunal to determine whether there is any genuine issue as to any material fact and, if not, whether the movant is entitled to prevail as a matter of law.

In this matter, ever since December 28, 2015, the State Respondents have had the opportunity to assert that there are genuine issues of material fact by denying any of the voluminous facts, most based on the public record, asserted by the Petitioners in their Request for Admissions. Pursuant to N.J.A.C. section 1:1-10.4, "in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4 (d)." There is no evidence that State Respondents have directly responded to Petitioners' request for admissions or objected to it as provided for in the relevant N.J.A.C. section. Therefore, by operation of the section, all the facts asserted by Petitioners should be deemed admitted.

Beyond that, most, if not all, the material facts necessary to establish that Petitioners are entitled to prevail as a matter of law are a matter of public record appropriate for judicial notice. A factual hearing would, therefore, serve no useful purpose.

These material facts support the following conclusions:

1. The school funding formula in the School Finance Reform Act of 2008, even if fully funded, is manifestly inadequate to provide sufficient state aid to the Lakewood school district given its unique status and demographic circumstances;
2. Lakewood's uniqueness is demonstrated by the State's action in removing its District Factor Grouping rank because Lakewood, alone among New Jersey's sizable school

districts, has more than 50% of its school-age children enrolled in nonpublic programs (indeed, about 80% of Lakewood's school-age children actually are enrolled in nonpublic programs);

3. Most of the 20% of Lakewood's school-age children enrolled in the public schools are educationally at-risk, low-income Hispanic students with a high incidence of Limited English Proficiency status and special education classifications, therefore making them costly to educate;
4. Almost 45% of Lakewood's education budget is consumed by the costs of transporting and providing costly special education services to the uniquely large nonpublic school population, making a mockery of SFRA's concept of an "adequacy budget" when applied to Lakewood;
5. Although by most benchmarks Lakewood is among the very poorest municipalities in New Jersey, its Local Fair Share far exceeds that of comparable, or substantially wealthier, school districts, thereby dramatically reducing SFRA's calculation of state aid (state aid=adequacy budget-Local Fair Share);
6. Lakewood's actual tax levy for the public schools substantially exceeds its statutory Local Fair Share (in 2015-16, $84,693,837vs. $71,198,357; in 2016-17, ordered by the state fiscal monitor to be increased to $90,350,168);
7. The excessive Local Fair Share is partly at least a function of Lakewood's unique demographics since its aggregate wealth is a function of its having about 31,000 school-age residents, with about 25,000 of them receiving only a modest portion of their education costs from public coffers;
8. State aid has been constant for three years at about $15 million, about $7 million (or

almost one-third) less than a fully funded SFRA would produce, and dramatically less than what other districts of comparable wealth and educational needs receive;

9. State aid amounts to only about 12.5% of Lakewood's total education costs;
10. State fiscal monitors have been in virtual control of the Lakewood school district's finances for the past several years and one of them, Michael Azzara, has stated at a public board of education meeting that the district's problem is revenue and not spending;
11. Lakewood's local tax resources have been utilized to excess and the only source of substantial additional funding is the State whose obligation it is to ensure that Lakewood's students receive a constitutionally adequate education;
12. The situation is getting worse from year to year, and the problem will be dramatically exacerbated in the near future if the projected growth of the district's nonpublic school population materializes;
13. The district's projected year-end deficit as of June 30, 2016 will be $12,389,288, necessitating the release of 68 classroom teachers (with average class sizes increasing to 38-39 in K-12), three guidance counselors and three administrators;
14. During the service of the state fiscal monitors, the Lakewood deficit increased from about $5 million to well over $12 million;
15. The performance of Lakewood public school students, by all the usual metrics, is consistent with the low level of funding finding its way to their schools and classrooms; and
16. The Lakewood superintendent of schools, Laura A. Winters, and president of the Lakewood Board of Education, Barry Iann, took the unusual step of writing letters to

the Interim Executive County Superintendent Todd Flora and to Commissioner of Education David C. Hespe, respectively, expressing dismay at the woeful state of education in their district (in the case of Superintendent Winters explicitly acknowledging that Lakewood has been rendered unable to provide its students with a "thorough and efficient" education).

As the Winters and Iann letters attest, this is an educational emergency of great and rapidly growing proportions. Although Lakewood is not a state-operated district, the State has had a substantial presence there for several years in the form of a fiscal monitor, Michael Azzara, a state auditor and additional state personnel. Clearly, that has not been an adequate answer to Lakewood's educational problems. Substantially more state aid, at least to compensate for the 44.7% of the district budget spent on nonpublic school students, could be.

Since the Commissioner's broad powers to ensure that districts provide their students with a constitutional education have been well-recognized for more than a half century, s*ee, e.g.*, *Jenkins v. Morris Township School District*, 58 NJ 483 (1971), the Commissioner should come forward with a detailed plan for carrying out his responsibilities in the Lakewood school district based on the facts asserted by the Petitioners and admitted by the State Respondents. More may be required for a complete remedy of the constitutional deprivation experienced by Lakewood's public school students, but nothing less can be justified now.

Respectfully submitted,

Paul L. Tractenberg

cc (by electronic mail and fax): Arthur Lang, Esq.
Daniel Grossman, Esq.
Geoffrey N. Stark, Esq.