

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-003693-20

LEONOR ALCANTARA, individually and as
Guardian ad Litem for E.A.; LESLIE JOHNSON,
individually and as Guardian ad Litem for D.J.;
JUANA PEREZ, individually and as Guardian ad
Litem for Y.P.; TATIANA ESCOBAR
individually; and IRA SCHULMAN, individually
and as Guardian ad Litem for A.S.
Petitioners,

v.

DAVID HESPE, COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
EDUCATION; the NEW JERSEY STATE
BOARD OF EDUCATION; and the NEW
JERSEY DEPARTMENT OF EDUCATION
Respondents.

ON APPEAL THE FINAL
DECISION OF THE
COMMISSIONER OF
EDUCATION
AGENCY REF. NO.: 156-6/14
OAL DOCKET NO. EDU 11069-
2014S

SAT BELOW: HONORABLE
SUSAN A. SCAROLA, ALJ

APPENDIX VOLUME I
Pages 1a-200a

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AppendixVolume I

Final Agency Decision.....	3a
ALJ Decision.....	14a
Notice of Appeal.....	125a
Petition.....	129a
Second Amended Petition.....	161a
Respondents' Answer.....	
172a 2015-16 to 2017-18 Loans ((P-74, 6T 19-20 and R26 to 28, 7T45-8 to 48-16).	
2018-19 Loan (11T 53-9 to 11).....	191a
Emergency Aid 2018-19 (P-81, 6T 19-12).....	194a
2019-20 Loan (SICRA at 108b).....	195a
2020-21 Loan (NA).....	199a

Volume II

July 29, 2019 Letter ALJ Scarola (ALJ at 6).....	203a
NJDOE data per request of Judge Scarola (ALJ at 7).....	207a
Business Administrator's Report (P-23, 2T 167-14).....	219a
NJ School Performance Reports (NJDOE website).....	222a
Taxpayers' Guide to Educational Spending (NJDOE website).....	248a
Approved IDEA Application 2017-18(NJDOE website).....	253a
Approved IDEA Application 2021-22 (NJDOE website).....	255a
Press Reported Population Ranking, 2020 Census.	256a
Notice to Districts 2018-19 (R-1, 7T 15-9).....	258a
User Friendly Budget, 2018-19 (P-67, Lakewood BOE website).....	259a
User Friendly Budget, 2020-21 (NJDOE website).....	260a
Per capita income rankings(P-7-3, 6T 18-3).....	262a
Census Poverty Data (P-7-4, 6T 24-20).....	263a
Lakewood High School Title I 2015-16 and 2017-18 allocation..... (P-14).....	267a
NJDOE Priority Schools and Focus Schools(P-44A).....	269a
Expert report of Dr. C. Danielle Farrie (P-34).....	272a
Certification of Dr. Danielle Farrie in support of Emergency Motion (P-60).....	284a
Table of Revenue Gap Accompanying Dr. Farrie's Certification(P-60).....	286a
CV of expert witness Melvin L. Wyns (P-75).....	288a
Expert report of Melvin L. Wyns (P-76).....	293a
Glenn Forney Letter Approving 2018-19 Loan (P-81, 6 17-20).....	324a
2020 Population, US Census. NA.....	326a

149-21

New Jersey Commissioner of Education**Decision**

Leonor Alcantara, individually and as guardian *ad litem* for E.A., et al,

Petitioners,

v.

David Hespe, Commissioner of Education;
New Jersey State Board of Education; and the
New Jersey State Department of Education,

Respondents.

Synopsis

Petitioners – who include parents of students in the Lakewood Public School District (Lakewood) – alleged that the funding formula under the School Funding Reform Act, *N.J.S.A.* 18A:7F 43 - to -70 (SFRA) is inadequate in regard to Lakewood because it does not deliver sufficient funding to provide the district's students with a thorough and efficient education (T&E). The petitioners attribute this shortfall to the extraordinary costs that Lakewood incurs by providing transportation and special education services to a large number of resident students who attend private schools.

The ALJ found, *inter alia*, that: under the N.J. Supreme Court's *Abbott* and *Bacon* decisions, T&E is measured through a combination of factors, ranging from test scores to dropout rates to diversity of course offerings; by most of these measures, the education received by Lakewood's students is not constitutionally adequate; petitioners have failed to show that the SFRA is solely or significantly responsible for Lakewood's inability to provide its students with T&E; Lakewood's failure to raise taxes as permissible under the SFRA reduced its ability to take necessary steps to provide T&E; Lakewood has not shown that rising transportation costs are totally attributable to an increase in the number of nonpublic school students, nor that the district has done everything it can to cut down transportation costs; Lakewood has failed to develop strategies to educate more special education students in district and has not made progress towards a comprehensive preschool program for at-risk children. The ALJ concluded that Lakewood has been unwilling or unable, on its own, to provide T&E to its students but such failure cannot be attributed to the SFRA. Accordingly, the ALJ recommended that the Commissioner conduct a needs assessment for Lakewood similar to the study conducted in 2009 following the *Bacon* decision.

Upon review, the Commissioner, *inter alia*: disagreed with the ALJ's determination that Lakewood is not providing its students with T&E, but agreed that petitioners have failed to show that the SFRA is responsible for Lakewood's deficiencies; notwithstanding this determination, in light of the factual record elicited by the OAL, the Commissioner directed the Department to conduct a comprehensive review of the District in order to assess its compliance with the quality performance indicators in accordance with *N.J.A.C.* 18A:7A-11. In so doing, the Commissioner acknowledged Lakewood's educational shortcomings but pointed out that the deficiencies do not rise to the level of unconstitutional; further, the SFRA is constitutional as applied to Lakewood.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

149-21

OAL Dkt. No. EDU 11069-14
Agency Dkt. No. 156-6/14

New Jersey Commissioner of Education

Final Decision

Leonor Alcantara, individually and as Guardian ad Litem for E.A.; Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P.; Tatiana Escobar; Henry Moro and Ira Schulman, individually and as Guardian ad Litem for A.S.,

Petitioners,

v.

David Hespe, Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; and New Jersey Department of Education,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the parties and participants pursuant to *N.J.A.C.* 1:1-18.4, and their replies thereto.¹

Petitioners in this matter are parents of children who attend Lakewood Township's public schools. In a 2014 petition² filed against the New Jersey Commissioner of Education, the New Jersey Department of Education (Department), and the New Jersey State Board of Education (collectively, "Respondents"), petitioners alleged that the Lakewood

¹ Participant Lakewood Township Board of Education did not file a reply.

² Petitioners amended their petition on September 4, 2018.

Township Board of Education (Lakewood) is unable to provide its public school students with a thorough and efficient education (T&E) because it does not receive sufficient funding under the School Funding Reform Act, *N.J.S.A.* 18A:7F-43 to -70 (SFRA). Petitioners maintain that the SFRA fails to account for the amount the district pays in special education and transportation costs for the large number of resident students who attend private schools. Subsequently, Lakewood and Paul Tractenberg, Esq., joined this matter as participants.³⁴

Following a hearing, the Administrative Law Judge (ALJ) found that Lakewood's public school students are not receiving T&E; however, petitioners failed to meet their burden of demonstrating that the SFRA is solely or significantly to blame. The ALJ found that the population boom in Lakewood Township over the past twenty years has resulted in a rise in attendance at private schools, totaling almost 30,000 non-public school students compared to approximately 6,000 students who attend Lakewood public schools. This causes a strain on the district financially, as the private school students are entitled to transportation at Lakewood's expense; further, tens of millions of dollars are spent each year to send special education students to out-of-district placements.

The ALJ concluded that Lakewood's public school students are not receiving T&E as they are not being prepared for college, career and life under the New Jersey Student Learning Standards. The ALJ found that the education received by Lakewood's students is not constitutionally adequate based on cuts in industrial arts and auto mechanics, foreign language programs (leaving Spanish as the sole option), low standardized test scores, chronic absenteeism

³ Mr. Tractenberg is a Professor of Law Emeritus and Board of Governors Distinguished Service Professor at Rutgers University. He established the Education Law Center, the Institute on Education Law and Policy, and the Center for Diversity and Equality of Education.

⁴ While Lakewood initially declined to join this matter as a party and joined instead as a participant in 2016, Lakewood subsequently filed a motion to intervene as a party at the start of the hearing in 2018, which was denied.

rates, increased dropout rates, low graduation rates, and low New Jersey Quality Single Accountability Continuum scores. Additionally, the ALJ considered the increased rates of teacher turnover, low per pupil classroom spending and classroom salaries, and the lack of a preschool program for three-year-old general education students in determining that Lakewood students are not receiving T&E.

Nevertheless, the ALJ found that the SFRA is not unconstitutional as applied to Lakewood and that Lakewood has failed to take steps to increase its ability to provide T&E. For example, the ALJ explained that Lakewood's transportation costs have continued to increase annually from \$23M in 2014-15 to \$31M in 2018-19, and there is little evidence that Lakewood has done everything possible to cut down these costs; further, there is no evidence that these rising costs are solely due to the increasing number of nonpublic school students in the district. Additionally, the ALJ noted that a large portion of Lakewood's budget is dedicated to special education due to the number of out-of-district placements (specifically, 343 special education students were placed in private schools for a cost of \$33M in 2018-19), but the record lacks evidence of any steps taken to set up a district-run program to save money by educating special education students in-district, as the Department has urged. The ALJ also reasoned that Lakewood has not made efforts to raise taxes to the extent permitted under the SFRA and does not offer a comprehensive preschool for three-year-old general education students. Further, the ALJ added that other legislation outside the SFRA has affected Lakewood financially, such as a tax levy cap on school districts and the annual Appropriations Act.

Finally, to address the deprivation of T&E, the ALJ recommended the Department to conduct a needs assessment with the goal of assessing Lakewood's educational needs and identifying ways to successfully address same. Through the assessment, the ALJ

hopes that the Department's transportation, special education, and preschool experts will be able to help identify strategies to deliver T&E to Lakewood's public school students.

In their submissions, petitioners agree with the ALJ that Lakewood students are not receiving T&E. Petitioners maintain that Lakewood's once rich curriculum has been reduced to bare-bones. Test scores have fallen, college enrollment is low, and any reported gains in those figures are insignificant. Petitioners explain that the district consists of low-income residents with a high minority population and limited English proficiency. Further, while Lakewood may offer educational opportunities to its students in areas such as vocational education, technology and the arts, petitioners argue that such programs provided through federal funding cannot be considered when evaluating whether students are receiving T&E as they are not funded through the district's operating budget.

While agreeing that Lakewood does not provide its students with the constitutionally required T&E, petitioners take exception to the ALJ's finding that the SFRA is not to blame for Lakewood's inability to provide T&E. First, petitioners argue that the ALJ applied the incorrect standard when she found that petitioners did not meet their "heavy burden," and instead should have applied a preponderance of the evidence standard. Petitioners then argue that the ALJ erred in finding that the district is not taxing up to its local fair share. According to petitioners, the ALJ improperly faulted Lakewood for not raising taxes by the maximum amount allowed during prior years when it did not need the additional funding, as well as for the failure of voters to pass a referendum. With respect to the Appropriations Act, petitioners maintain that they would not have had enough funding even with the amount that was cut in appropriations. Additionally, petitioners disregard the ALJ's findings on preschool because it was not addressed by the parties.

Petitioners emphasize that the SFRA provides funding based on 6,000 public school students, yet Lakewood is also required to pay transportation costs for an additional 30,000 private school students. Petitioners argue the ALJ erred in finding that rising transportation expenses are not totally attributable to the increasing number of nonpublic students. The record demonstrates that the district adds 2,500 to 3,000 nonpublic students each year, and the state monitors testified that Lakewood is operating its pupil transportation as efficiently as it can. Additionally, petitioners point out that the state monitors have not found ways to cut costs in special education. Finally, petitioners argue that the provision of advance aid is unsustainable and is a disguise for the failure to provide T&E; the ALJ should have found that the loans, as applied to Lakewood, are inconsistent with T&E. Accordingly, petitioners urge the Commissioner to reject the portion of the Initial Decision finding that SFRA is not unconstitutional as applied to Lakewood.

In their submissions, respondents take exception to the ALJ's conclusion that Lakewood is unable to provide T&E. Respondents argue that with the Department's assistance, the district has shown steady improvement on standardized test scores and graduation rates. Additionally, they contend that the district offers classes and opportunities to students in basic skills, vocational, arts and technology to prepare them for college, career and life. As such, respondents urge the Commissioner to reject this part of the Initial Decision.

Respondents, however, agree with the ALJ that the SFRA is not unconstitutional as applied to Lakewood. They argue that the ALJ appropriately applied a heavy burden on petitioners to demonstrate that the SFRA was solely or significantly to blame for any failure to provide T&E. Respondents are in accord with the ALJ's determination that Lakewood's fiscal mismanagement, general financial condition, and locally made choices have impacted

Lakewood's ability to provide a constitutionally-mandated education. Accordingly, respondents urge the Commissioner to reject the ALJ's conclusions regarding T&E.

Participant Tractenberg makes arguments similar to those of the petitioners. Specifically, he agrees with the ALJ that Lakewood cannot provide T&E to its public school students, but argues that: the ALJ applied the wrong burden with respect to whether the SFRA is constitutional; the ALJ's findings of fact do not support her conclusion that the SFRA is not significantly responsible for Lakewood's inability to provide T&E, and the ALJ's alternative explanations for Lakewood's financial situation are unsupported. Tractenberg further contends that the needs assessment ordered by the ALJ will not be helpful, and instead urges the Commissioner to take steps to forgive Lakewood's advance state aid repayments, support legislative action to adjust the SFRA's formula to respond to Lakewood's unique demographics, seek statutory changes so that the members of Lakewood's Board of Education accurately represents the public-school community rather than people who do not send children to public school, and consider a State takeover of the district.

Lakewood requests that the Commissioner reopen this matter and allow it to proceed as an intervenor – rather than a participant – so that it may present additional evidence of the significant progress and improvements the Board has made toward delivering T&E.⁵ Lakewood contends that it is providing T&E to its students, but that the funding formula of the SFRA is unconstitutional as applied to Lakewood.

Upon review of the record in this matter, the Commissioner disagrees with the ALJ that Lakewood is not providing T&E to its public school students. While the Commissioner acknowledges the ALJ's findings regarding the district's shortcomings, the record does not

⁵ The Commissioner denies Lakewood's request to reopen the case as a full record exists in this matter and such action would cause undue delay.

support a conclusion that Lakewood is failing to provide T&E. Notwithstanding, in light of the factual record elicited by the OAL, the Department is directed to conduct a comprehensive review of the District's organization, structure and policies to assess its compliance with the quality performance indicators in accordance with *N.J.A.C.* 18A:7A-11 to determine how the District can improve its educational program.

In *Abbott v. Burke (Abbott II)*, 119 *N.J.* 287 (1990), the New Jersey Supreme Court compared the educational opportunities available at affluent suburban schools and poorer urban districts to evaluate whether the urban schools were receiving a constitutional education. The Court looked at educational inputs, such as access to computers, science laboratories, foreign language instruction, music and art programs, vocational programs, and physical education. *Id.* at 359-62. The Court also explained that adequate physical facilities are also necessary for T&E so that children have an appropriate environment where they can learn. *Id.* at 362-63. Additionally, T&E can be measured by test scores, dropout rates, and attendance at college, in addition to teacher-student ratios and experience level of the staff. *Id.* at 366-68; 391. Similarly, in *Bacon, et al. v. New Jersey State Department of Education*, State Board Decision No. 4-03, decided January 4, 2006 at 39-40, the New Jersey State Board of Education evaluated whether districts were providing T&E and considered standardized test scores, dropout rates, and college attendance, in conjunction with “teacher-student ratios and the education and experience level of the professional staff, as well as facilities to accommodate appropriate class sizes, science labs, media centers and libraries, and the availability of advanced placement courses and programs for gifted students, art and music programs and quality physical education programs.”

While Lakewood's standardized test scores are below the State average, they have shown consistent improvement. For example, in the 2014-15 school year, 23 percent of high

school students met or exceeded expectations on the PARCC English assessment, and 5 percent met or exceeded expectations in math. By 2018-19, those scores rose to 33 percent for English and 21 percent in Math. Additionally, graduation rates were close to 75% in the 2014-15 school year and rose to 81% in 2018-19. With the exception of absenteeism, Lakewood has also met all of its Every Student Succeeds Act (ESSA) accountability targets. Additionally, while some of the educational opportunities at Lakewood have suffered cuts, including programs in industrial arts and auto mechanics, Lakewood still offers a range of classes and programs. Lakewood offers all of the required classes for graduation, and also offers a gifted program beginning in elementary school, along with high school Advanced Placement (AP) classes across several subjects, including calculus, English, Physics I and II, Spanish, and U.S. History. Lakewood offers art and music programs at every level, including elementary school. Specifically, the district offers band, chorus, and orchestra, as well as music lessons beginning in fourth grade. Furthermore, computer skills and library skills classes are offered beginning at the elementary level, and guidance counselors are available at all grade levels.⁶ While Lakewood only offers Spanish as a foreign language, it does provide opportunities for students to study other foreign languages online. Although Lakewood does have a high rate of teacher turnover and the student-teacher ratio in Lakewood's schools is higher than the State average, Lakewood did meet its ESSA facility accountability targets, with the exception of the middle school.

When considering the standards articulated in *Abbott* and *Bacon*, the Commissioner finds that the education provided by the Lakewood school district meets the constitutional threshold as students are prepared for college, career, and life under the NJSL.

⁶ Additional programs that are offered at Lakewood through Perkins or Title I grants include robotics, coding, horticulture, culinary, fashion and apparel, graphics design, photography and film, video technology, business data entry, and a technology classroom that has 3D printers, Apple TV, and a Mac Air Cart.

The following excerpt from *Abbott II* demonstrates the degree of deficiencies necessary to declare a failure to provide T&E:

In an elementary school in Paterson, the children eat lunch in a small area in the boiler room area of the basement; remedial classes are taught in a former bathroom. In one Irvington school, children attend music classes in a storage room and remedial classes in converted closets. At another school in Irvington a coal bin was converted into a classroom. In one elementary school in East Orange, there is no cafeteria, and the children eat lunch in shifts in the first 1 floor corridor. In one school in Jersey City, built in 1900, the library is a converted cloakroom; the nurse's office has no bathroom or waiting room; the lighting is inadequate; the bathrooms have no hot water (only the custodial office and nurse's office have hot water); there is water damage inside the building because of cracks in the facade; and the heating system is inadequate.

[*Abbott II*, 119 N.J. at 363.]

In evaluating the totality of the evidence, the Commissioner finds that while Lakewood may be struggling to provide its students with the premiere level of education that many have come to expect in New Jersey, these deficiencies do not rise to a constitutional deprivation. The record reflects that standardized test scores are below State averages, but the district is showing slow but steady improvement in that area. Lakewood offers a selection of educational programs, including multiple AP classes, as well as programs in music and art that begin at the elementary school level, which are more comprehensive and wide-ranging than those offered in the *Abbott* and *Bacon* districts. While some programs have suffered cuts, students still have a diverse array of educational course opportunities. The Commissioner acknowledges the lack of experience in Lakewood's teachers, however, in consideration of recognized teacher shortages, the improvement that the district has shown in test scores and graduation rates, together with the district's diverse curriculum, the Commissioner cannot conclude that Lakewood's students are not receiving T&E.

Because petitioners failed to meet the threshold inquiry of establishing Lakewood's failure to provide T&E, the Commissioner need not reach the issue of the constitutionality of the SFRA.⁷ Nevertheless, the Commissioner agrees with the ALJ, for the reasons thoroughly set forth in the Initial Decision, that the SFRA is constitutional as applied to Lakewood.

Accordingly, the Initial Decision of OAL is rejected in part and adopted in part for the reasons set forth above. The petition is hereby dismissed.

IT IS SO ORDERED.⁸



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 16, 2021
Date of Mailing: July 16, 2021

⁷ For these same reasons, the Commissioner need not reach the issue raised in petitioners' exceptions regarding the burden of proof to be applied to the question of whether the SFRA is unconstitutional as applied to Lakewood.

⁸ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

**LEONOR ALCANTARA, INDIVIDUALLY
AND AS GUARDIAN AD LITEM FOR E.A.;
LESLIE JOHNSON, INDIVIDUALLY AND
AS GUARDIAN AD LITEM FOR D.J.;
JUANA PEREZ, INDIVIDUALLY AND
AS GUARDIAN AD LITEM FOR Y.P.;
TATIANA ESCOBAR; HENRY MORO AND
IRA SCHULMAN INDIVIDUALLY AND
AS GUARDIAN AD LITEM FOR A.S.,¹**

Petitioners,

v.

**DAVID HESPE, COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
EDUCATION²; THE NEW JERSEY STATE
BOARD OF EDUCATION; AND THE NEW
JERSEY DEPARTMENT OF EDUCATION,**

Respondents.

¹ Counsel for petitioners advised that petitioners included a student and parents of students who attend the Lakewood Township public schools and a parent of a nonpublic school student in Lakewood Township. At some point, Moro and Johnson appear to have withdrawn from the action.

² In 2017, Commissioner Hespe was succeeded by Commissioner Kimberly Harrington; in 2018, she was succeeded by Commissioner Lamont Repollet; on July 1, 2020, he was succeeded by Acting Commissioner Kevin Dehmer; and finally, on October 20, 2020, he was succeeded by current Acting Commissioner Dr. Angelica Allen-McMillan.

Arthur Lang,³ Esq., and **Daniel L. Grossman**,⁴ Esq., appearing for petitioners

Jennifer Hoff, Lori Prapas,⁵ **Lauren Jensen, Geoffrey N. Stark, and Sydney Finkelstein**, Deputy Attorneys General, appearing for respondents (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Michael Inzelbuch, Esq., appearing for participant Lakewood Township Board of Education

Paul L. Tractenberg, Esq., appearing as a participant

Record Closed: November 28, 2019

Decided: March 1, 2021

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioners, who included parents of children who attend Lakewood Township's public schools, filed a petition of appeal against respondents Commissioner of Education, the New Jersey Department of Education (DOE), and the New Jersey State Board of Education (collectively respondents), in which they allege that the funding formula under the School Funding Reform Act, N.J.S.A. 18A:7F-43 to -70 (SFRA), is unconstitutional as applied to Lakewood Township's (Township) public school students, such that the Lakewood Board of Education (Lakewood, BOE or district)⁶ does not receive sufficient funding under the SFRA to provide its public school students with a thorough and efficient education (T&E) because the SFRA does not take into account the extraordinary costs

³ Mr. Lang is also a teacher in the Lakewood public school district.

⁴ Mr. Grossman, who was assisting Mr. Lang, was permitted to withdraw as co-counsel on January 10, 2019.

⁵ Ms. Prapas participated in the hearing but, sadly, passed away before the completion of this matter.

⁶ The Lakewood Township Board of Education and the Lakewood school district are referred to as Lakewood, BOE or district; the geographic entity of Lakewood Township is specifically referred to as Lakewood Township or Township.

that the district incurs to provide transportation and special education services to a large number of students who attend private schools.

Respondents contend that Lakewood's students are, in fact, receiving T&E, as measured by the New Jersey Student Learning Standards; that respondents have, over the years, taken extraordinary actions, including the appointment of State monitors in Lakewood and the provision of advance State aid payments to Lakewood to ensure that the district's students receive T&E; and that the district's financial difficulties are due to reasons other than the SFRA.

The issue is whether the children who attend public school in the district are receiving a constitutionally-required T&E and, if not, whether the reason for such deprivation is, in significant part, because the district receives insufficient funding under the SFRA to deliver T&E to its students. The school years at issue are 2014-2015 through 2018-2019.

PROCEDURAL HISTORY

The original Petition of Appeal was filed with the Commissioner on June 24, 2014.⁷

On September 2, 2014, the respondents filed a motion to dismiss in lieu of an answer. The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 4, 2014, as a contested case.⁸ N.J.S.A. 52:14B-

⁷ The petition asked the Commissioner for a declaratory ruling that all of Lakewood's students are entitled to the same services to which students similarly situated elsewhere in New Jersey are entitled, and to foreclose the possibility of a remedy that disparately impacts the children of Lakewood or that forces them to forego their rights and privileges under the current law.

⁸ N.J.A.C. 1:1-2.1 defines a "contested case" as "an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing." Moreover, "[t]he required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests" and "[c]ontested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people." Ibid.

1 to -15; N.J.S.A. 52:14F-1 to -13. The motion was opposed by reply filing on October 22, 2014.

On January 14, 2015, Paul L. Tractenberg, Esq., filed a motion on his own behalf for leave to participate in the proceedings pursuant to N.J.A.C. 1:1-16.6 and in opposition to the motion to dismiss.⁹ On March 11, 2015, the Hon. John Kennedy, ALJ, granted Professor Tractenberg's motion to participate.

Following the submission of briefs on the motion to dismiss and oral argument held on June 9, 2015, Judge Kennedy denied the motion to dismiss on July 24, 2015. He concluded that the petitioners had standing to challenge the SFRA and that the matter was appropriately brought in the OAL.

On or about February 19, 2016, the petitioners filed a motion for summary decision contending that a hearing was not necessary, as all data necessary to rule on the matter was in the public record. On April 14, 2016, the respondents filed opposition to the motion, and sought to join Lakewood BOE as a necessary party. The BOE voted to not participate in the action. On July 19, 2016, the Hon. Solomon A. Metzger, ALJ, t/a, issued an order denying the motion for summary decision. He noted that "Lakewood's demographics pose[d] singular problems for the public school budget, but that that fact alone was not sufficient on its face to establish a constitutional level of deprivation."

On October 4, 2016, the BOE filed a motion to participate, which was granted on November 21, 2016.

In May 2017, the petitioners filed a motion for emergency relief related to the district's 2017–2018 budget deficit. Respondents filed opposition on May 23, 2017.¹⁰ That motion was withdrawn when the budget deficit was resolved through a State aid advance.

⁹ Professor Tractenberg is Professor of Law Emeritus Board of Governors Distinguished Service Professor at Rutgers University. He established the Education Law Center, the Institute on Education Law and Policy, and the Center for Diversity and Equality of Education.

¹⁰ The matter was re-assigned from ALJ Metzger to ALJ John Schuster. After he retired, the matter was reassigned to me in June 2017.

On October 9, 2018, the BOE'S motion to intervene as a party was denied prior to the commencement of the hearing.¹¹

The hearing commenced on February 5, 2018, and continued on February 7, 12, 13, and 22, 2018. After petitioners rested their case on February 22, 2018, respondents indicated that they wished to file a motion to dismiss. Following the last hearing date, the parties attempted to enter into some stipulations of fact but were unsuccessful. Following a March 27, 2018, conference on the record, the outstanding evidentiary issues were addressed, and a briefing schedule was set for the respondents' motion.

Respondents filed their motion to dismiss the amended complaint on April 30, 2018. Petitioners and participants opposed the motion. Before it was decided, the petitioners moved to re-open their case to present the testimony of another witness, which was opposed by respondents. Following oral argument, the petitioners were ordered to file an amended petition to clarify the relief they were seeking; respondents were permitted to file an answer. Petitioners were permitted to re-open the record to allow the witness to testify, and the motion to dismiss was held until the amended pleadings and answer were filed and the witness was permitted to testify.

On September 4, 2018, the petitioners filed their second amended petition which respondents answered on September 18, 2018.¹²

On December 18, 2018, the petitioners rested their case.

¹¹ The Lakewood BOE had originally taken the position that it did not want to be included as a necessary party; however, the BOE's counsel had changed since the commencement of these proceedings. No appeal was taken from the denial of the motion to intervene as a party.

¹² The second amended petition asked the Commissioner to determine: 1) That the SFRA as applied to the Lakewood School District does not provide sufficient funding to enable the school district to deliver the core curriculum content standards and extracurricular and cocurricular activities necessary for T&E; 2) That the consequential reliance upon discretionary advance State aid payments pursuant to N.J.S.A. 18A:7A-56 to provide funding for T&E does not provide T&E funding in any given school year that is certain and predictable; 3) That the constitutional imperative regarding T&E requires sufficient funding that is not discretionary; and 4) That the Commissioner recommends that this matter be remedied by the Legislature.

On January 8, 2019, the respondents' motion to dismiss was denied, and the matter continued with hearing dates on July 9, 10, 21, and 22, 2019.

On July 29, 2019, the parties were asked, as part of their post-hearing briefs, to jointly stipulate, to the maximum extent possible, certain information relating to the district for each school year at issue in this matter (2014–2015 through 2018–2019), which should have been available to them as a matter of public record.¹³

¹³ The information requested the following:

School Funding Reform Act

- (1) Adequacy Budget (include calculation)
- (2) Local Fair Share (include calculation)
- (3) Local Tax Levy (General Fund School Levy and Total School Levy)
- (4) Equalization Aid
- (5) Transportation Aid (include calculation)
- (6) Special Education Categorical Aid (include calculation)
- (7) Total Aid

Note: Where relevant for a particular category above, include the amount in Governor's Budget Message/revised amount in Appropriations Act/amount if SFRA fully funded.

Other State and Federal Revenue Sources

- (1) Title I
- (2) IDEA Part B
- (3) Chapter 192 (Auxiliary Services)
- (4) Chapter 193 (Remedial Services)

Expenditures

- (1) Total tuition costs for private school special education placements (include number of private placements)
- (2) Total transportation costs (include breakdown showing amount spent on mandatory busing for public school students/mandatory busing for private school students/special education busing/courtesy busing/hazardous busing)
- (3) Actual costs amount per public school pupil
- (4) Total classroom instruction costs per public school pupil

Assessments and Accountability

- (1) PARCC results (include state averages)
- (2) Any other Statewide assessment results (include state averages)
- (3) QSAC placement results in areas of instruction and program, fiscal management, governance, operations, and personnel (include state averages)
- (4) Any other relevant accountability results, including CAFR's from 2014–2018.

Public School Demographics

- (1) Percentage of public school pupils who are at-risk (include state average)
- (2) Percentage of public school pupils who are LEP (include state average)
- (3) Percentage of public school pupils who are both at-risk and LEP (include state average)
- (4) Graduation rate (include state average)
- (5) Dropout rate (include state average)
- (6) Teacher-student ratio (include state average)
- (7) Percentage of public school pupils enrolled in AP/IB courses (include state average)

On August 28, 2019, the respondents declined, stating that they would stipulate to all documents already admitted into evidence at the hearing, but would not stipulate to any additional data to be part of the record without context for its consideration.

On September 4, 2019, the petitioners provided an itemization of the information that had been requested.¹⁴

The record closed on November 28, 2019, after submission of post-hearing summations.^{15, 16}

On December 17, 2020, participant district submitted additional documents. The DOE objected to the consideration of these documents, so they were excluded from the record.¹⁷

FACTUAL DISCUSSION

The following witnesses testified:

For the petitioners:

Dr. Ross Haber, Laura Winters, Robert Finger, Malka Spitz-Stein, Marcy Marshall, Dr. Danielle Farrie, David Shafter, Michael Azzara, and Melvin Wyns;

(8) Percentage of graduates enrolled in college (include state average)

¹⁴ The information provided by petitioners was downloaded from either the DOE's website or the district's website as information provided to the State for the receipt of aid. The respondents would not stipulate to these statistics.

¹⁵ Extensions of time were granted for the filing of this Initial Decision, first due to an extended personal medical emergency, and then in accordance with Governor Murphy's Executive Order 127, issued April 14, 2020, created by the COVID-19 emergency which provided that deadlines for filing of a recommended decision pursuant to N.J.S.A. 52:14B-10(c) in any non-emergent contested case were extended by the number of days of the Public Health Emergency declared in Executive Order No. 103 (2020), as extended, plus an additional 90 days.

¹⁶ Following the closing of the record, participant Lakewood BOE continued to send additional documents to the OAL over objection by the respondents. Some were duplicative of exhibits in evidence; the items that were not in evidence were not considered.

¹⁷ The documents included a settlement agreement between the Department of Education and the Township of Lakewood Board of Education dated December 11, 2020, concerning the NJQSAC score of 2020 (which were not addressed at this hearing), and a list of state aid advances from 2014 through 2021, the amounts repaid, and the amounts outstanding.

For the respondents:

Kevin Dehmer, Christopher Soleau, Catherine Anthony, Raymond Zirilli, Robert Ortney, and Glenn Forney.

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Witnesses for petitioners:

Dr. Ross Haber, a demographic consultant with a background in education, was qualified to testify as an expert in demographics. He has a doctorate in educational administration from Teachers College, Columbia University. He has conducted 300 studies in different districts regarding enrollment projections, redistricting, facility utilization, and transportation efficiency analysis. He is not an expert in finance, and has no background in accounting, finance, or statistics. He is not a certified government financial analyst.

Dr. Haber was retained by petitioners to provide an enrollment-projection report on public and non-public schools in Lakewood Township. For his report, he relied on certain DOE data and he used the cohort survival method of projections, including United States census projections, housing construction, and births to arrive at his conclusions.¹⁸

Dr. Haber's report included several tables of information. Table 1 was an enrollment comparison using data from the DOE, although he was not aware that non-public schools self-report enrollment information to the DOE and are not audited. Non-public school students may include students coming in from out of the district or out of state and may be counted without their parents paying taxes to the municipality.

Using the information obtained from the Application for State School Aid (ASSA) filed by the district, Dr. Haber examined school enrollment, school facilities, and student

¹⁸ The Cohort Survival Projection Method forecasts the future population based on the survival of the existing population and the births that will occur.

transportation. In 2011–2012, there were 25,006 school-age children, 5,229 in public school and 19,777 in non-public school.

In Haber’s Table 2, he used the cohort survival method, which used the average number of students as they progress from grade to grade, and also used the migration ratio. The projections were reliable for five years. For kindergarten, he looked at live-births rates and used that data plus residential housing growth. Haber thought growth looked to be about 5,000 more students by 2021–2022.

Haber used Table 1 to predict Table 2. He said the information came from the DOE website although no sources were provided. Table 1 relied on public school ASSAs from the DOE website. He agreed that if the underlying data were not reliable, then his conclusions were not reliable. He built upon enrollment projections to predict aid, but he is not an expert in finance or State aid.

Table 2 was a comparison between public and non-public schools and was the template for Table 3, but no source was given for historical data.

Table 3 was a projection of public school students but did not include data from pre-kindergarten. Haber listed 38,841 non-public school students for 2018–2019, but his Table 4 said 33,841 non-public school students. He said this was because of a typographical error on Table 2.

New Jersey has over six hundred school districts, but no other school district has a disparity between the numbers of public school and non-public school students as Lakewood Township does. Lawrence and Hewlett, New York, also have large numbers of students attending sectarian schools, but those towns have no outnumbering of the public school students by those attending the sectarian schools.

Haber’s reports project substantial change in the district. He did not report any possible sources of funding. He did not remember whether he considered that Lakewood Township had one of the lowest equalization rates. He did not consider that Lakewood

Township has one of the lowest school-tax rates. He did not consider that voters could approve paying for non-public school transportation costs.

Table 5 showed a projected expense of \$38 million for transportation in 2021–2022, up from \$18 million in 2015–2016. This was an estimate based on transportation eligibility, as a percentage increase in enrollment would be commensurate with an increase in transportation expenses.

For school year 2017-2018, the adequacy budget to educate the public school students in Lakewood was \$117,325,784. Tuition for enrolled public school students not actually going to the public schools, such as for special education, was \$37,587,808. Transportation was \$38,294,730, for a combined total of \$75,882,538.

Haber said Table 5 transportation expenses could be reduced if the non-public schools were built closer to homes, or if bus routes were shared. With fewer children riding on buses the cost would be less. He did not consider things that did not exist, such as a bridge over Route 9. The tuition and transportation costs in Table 5 came from the Lakewood district and the user-friendly budget. His tuition numbers were off by \$3 million for 2015–2016, and he agreed that his numbers did not match up. Two-thirds of the cost of special education should be included in tuition. He agreed it was possible he was double counting tuition and services, and that he had worked with petitioners' attorney while doing his analysis.

The tuition column in tables 5 and 6 showed \$28,457,996, which correlated to school year 2015–2016, but the revised column was not the actual expense. The Table 5 history and projection of tuition contained an error, perhaps in typing, and a year was missing. While the Table 5 adequacy budget that was projected was an assumption, he did not detail his method of producing adequacy amounts or the source. He held adequacy flat through 2022, but it changed year to year as the state population changed.

Table 6 concerned the adequacy amount for tuition, transportation, and other required services such as occupational therapy (OT), physical therapy (PT), speech, and other related services. He carried over the numbers.

Haber's projections were based on trends for 2018–2019, 2019–2020, and 2020–2021. He applied a percentage of the increase to a weighted number. For example, if six children in class increased to ten, that might not mean one more bus, but 54 more children might mean another bus. He applied the growth to expenditures and economies of scale. The methodology was not explained. Haber also used residential-construction approvals in his calculations but did not include that. At some point, population growth should be capped because of space.

On Table 6, it was an error where his comment said Table 4, when he meant it should be Table 6. The tuition numbers did not match up. Adequacy and transportation matched to Table 5, but the tuition did not match the actual budget. Haber assumed that part of special education was included in the adequacy budget. Table 6 showed services such as OT, PT, and speech, but speech was entirely funded. Table 6 separated the costs for services from adequacy, but Haber did not know if this was included in funding.

Table 7 was extra aid available for public school students, but he did not include extra aid in his considerations. He did not know if the State provided technology aid or security aid.

The budget included equalization aid, which was \$15 million in school year 2015–2016, special-education categorical aid, extraordinary aid, categorical security of \$2 million in 2015–2016, Perkins grants, and other aid of \$3 million in 2016–2017. The local-tax-levy contribution was not included, but it was \$90 million in 2015–2016 and was one of the lowest in the state. He did not include federal aid available to the district under federal Titles II and III, or available under Individuals with Disabilities Education Act (IDEA) aid.¹⁹ The State provided preschool aid, Chapter 192 and 193 services, and non-

¹⁹ Title II grants to the states provide funds for supplemental activities that strengthen the quality and effectiveness of teachers, principals, and other school leaders. The purpose of this is to provide low-income and minority students greater access to effective teachers, principals, and other school leaders. Title III funds help ensure that English Learners (ELs) attain English language proficiency and meet state academic standards.

public school textbook aid, nursing aid, vocational-technical aid and security aid.²⁰ Some services and tuition were included in the adequacy budget.

In Table 8, his conclusions were that enrollment was growing, and that over the next five years, the number of non-public school students would increase. At the same time, the number of students in the public schools was growing, but not as fast. Ninety percent of public school students were in need; 88% were from non-English-speaking or partial-English-speaking homes. The percentage of special-education students in the Lakewood public school district is higher than the State average. Everyone agreed that there was a relationship between finances and education. Lakewood Township ranked 555 out of 564 communities in per-capita income.

In Table 9, the tuition costs did not match, and the transportation costs did not match. The projections for school year 2020–2021 were missing. The adequacy numbers did not match other tables and budget numbers. The most accurate year was 2015–2016. He came to his conclusions by taking the average from 2015–2016 and 2016–2017, but the number was wrong. And his conclusion was based on data that did not match historical data from Table 6. The total needed in Table 4 did not match Table 7's total needed. In certain areas the data did not match up or the data was missing, or no sources were cited.

A percentage of the district's budget is a loan from the State. Transportation and special-education expenses are \$60 million in the budget, leaving only \$80 million when the adequacy budget says that \$117 million is necessary. The SFRA law never anticipated such a disparity with transportation and special-education expenses. The district cannot properly educate public school children over next five years; their needs cannot be met in Lakewood.

²⁰ Chapter 192 programs provide nonpublic school students with auxiliary services such as compensatory education, English as a second language, and home instruction. Chapter 193 programs provide nonpublic school students with remedial services such as evaluation and determination of eligibility for special education and related services, supplementary instruction, and speech-language services.

The law mandated that transportation was paid to and from school only for certain non-public school students, but not all. Non-public school students were not required to get transportation unless, from kindergarten to grade eight, they lived farther than two miles from the school, and in grades nine through twelve, farther than two and a half miles from the school. Students who lived closer were not entitled to transportation. Courtesy busing for those who lived closer than those distances was not required unless the Lakewood BOE decided to provide it.

Haber did not include in his report the \$16 million that Lakewood received in Chapters 192 and 193 aid in 2015–2016. Haber’s report did not mention Chapter 192–193 aid that Lakewood received every year. Lakewood Township’s non-public school students received Title I aid for economically disadvantaged students from the federal government.²¹ Haber did not mention IDEA funding in his report.

The State provided textbook aid for non-public school students. Haber did not know if the State provided other aid, such as nursing aid or home instruction.

The user-friendly budget matched up tuition and transportation, but some of the numbers did not match for 2016–2017. He was not sure if he omitted one year from his calculations and was not sure if he had the right draft.

Haber was not familiar with the DOE definition of adequacy as used in the Formula for Success (FFS). The FFS equalization is the adequacy budget minus what the township raises (local fair share), plus categorical aid, plus other aid and Chapter 192 and 193 funding. The adequacy budget is a theoretical concept of the cost estimate necessary to provide a T&E.

Haber did not know for certain whether tuition for public school students in out-of-district placements was included in the adequacy budget for public school students and said that this might represent a possible double counting of tuition. No sources were

²¹ Title I is a grant program that provides aid to low income students for educational services.

provided for the data he used for the tuition cost or transportation cost. Any projections could only be as accurate as the data used.

Haber made an assumption of enrollment increase, but not whether the adequacy budget would change. He did not consider the impact on the district if the Lakewood School Transportation Authority (LSTA)²² program expired. He agreed that if the LSTA program were to expire, it would cost the district more money to transport students. He did not consider whether costs could be saved if Lakewood Township built a bridge over Route 9 so more students could safely walk to school and avoid a hazardous condition. Haber did not consider a raise in the school-tax levy, or whether busing children to schools closer to their homes, or whether a growing population would mean more equalization aid. If enrollment increased 10 percent, he assumed that expenditures would increase 10 percent and that the adequacy budget would go up based on enrollment, but this was not considered in his calculations.

The source of his historical transportation information was the Lakewood business office, which provided him with district summary forms. He had no idea whether they were accurate.

Haber could not predict how costs might change if the law changed. And the estimates were based on a formula that did not match up. He did not consider a bridge over Route 9 because it did not exist. Nothing showed that the private schools were located closer to where their students resided. Ninety-eight percent of students attending sectarian schools did so in certain sects and gender-specific schools.

He did not consider the factors on State aid, as he was only looking at how much it cost to educate children. He did not go to how the cost was derived. He did not consider revenue, just expenditures.

²² The LSTA was created pursuant to N.J.S.A. 18A:39-1d, which became effective in 2016. That law “establish[ed] a three-year nonpublic school pupil transportation pilot program” under which “a board of education of an eligible district [with more than 5,000 students attending a remote nonpublic school] shall disburse to [a] consortium [of nonpublic schools] an amount equal to the aid in-lieu-of transportation amount for each nonpublic school pupil who is attending a nonpublic school which is a part of the consortium and who is required to be transported by the eligible district pursuant to N.J.S.18A:39-1.”

Haber considered factors not mentioned in his report and added what was needed. He concluded that Lakewood did not have the financial means to conduct a thorough and efficient education. He did not consider a public question about raising taxes or the ability of the people of Lakewood Township to raise taxes. He looked at the per-capita income of people employed and because Lakewood Township had a low employment rate, he assumed it had less ability to raise taxes, not that it might mean a large under-age population.

Haber looked at the growth of public school and non-public school students and saw how Lakewood Township is unique with non-public school students. He looked at income, growth, and a large transient population. He rejected some factors not included in his report, such as growth of population, racial/ethnic origins, the number of free- and reduced-lunch students, and the number of special-education students.

He was not able to consider the ability of the town to expand, as he did not know the master plan and had no way to determine it. He used some census data but had no federal data. He did not consider the effect that bringing the out-of-district special-education students back to the district would have; rather, he looked at the budget as a whole, and did not break it down.

Dr. Laura Winters has been the superintendent of Lakewood public schools since 2012.

In 2018, Lakewood had 6,092 enrolled public school students: one high school with grades nine to twelve; one middle school with grades six to eight; five elementary schools—two with kindergarten and first grade, and three with grades two through five; one preschool for special-education children ages three and four, and one for general-education students age four. The middle school has from twenty-eight to thirty-two students per class when it should be twenty-four. All schools operate at full capacity. The graduation rate is 75%, up from 69%, but the state average is 90.1%. The district is 8.1% Black and 86% Latino.

The district includes many students who have limited English proficiency (LEP) and require ESL (English as a second language) instruction, which is provided for forty minutes per day in the elementary and middle schools. For school year 2015–2016, there were 1,630 ESL students; for school year 2016–2017, there were 1,426 ESL students; and for school year 2017–2018, there were 1,538 ESL students (or about 25% of the student population).

For school year 2017–2018, 100% of the students received free or reduced lunch paid for by the United States Department of Agriculture.

Winters's role in the development of the district's budget was to provide educational input and to describe the programs or facilities that are needed for the students. In 2017 the district initially proposed an expansion of four classrooms and an addition to the cafeteria, but this was eliminated at the final budget.

For school year 2018–2019, the district budget process commenced in January with a projected budget that had a \$17–20 million shortfall just to maintain what they had, with nothing new added. If the projected shortfall were not covered, they would have to cut teachers for the fourth year in a row. In 2017, they sent out 140 reduction-in-force letters and lost 78 teachers either to their resigning in anticipation of layoffs, or because they had found employment elsewhere.

In 2017-2018, the budget was down \$14 million. The district asked for \$10 million in aid and received \$8.5 million in aid from the State. The State also deferred a \$1.5 loan payment that was due. This contributed to the ability to rehire some teachers and to avoid some of the budget cuts.

The Township also contributed \$1.1M to have a sports program which would have been lost in the budget (\$557,000 for public school sports, \$600,000 for non-public school students). The Township has indicated that no funds will be forthcoming for the 2018-2019 school year. Lakewood Township, not the district, pays for courtesy busing.

For school year 2016–2017, the district paid \$32,766,776 for out-of-district placements for 400 students who were registered as students in the public schools.²³ This is projected to increase to approximately \$36–38 million in 2017-2018. The child study team has determined that there is insufficient space in the district for all special-education students, so many out-of-district placements are necessary.

Each year, the district generally conducts 500–600 evaluations for entry into its preschool program. There are 500 kindergarten students. The district features an academically gifted program in elementary school and a guidance counselor is present in the middle and high schools.

The biggest challenge to the budget is that the district cannot hire new teachers, and teachers are resigning because morale is low. The teachers' union prepares for reductions in force (RIF's), and the children are worried about sports. The district has too much professional turnover. The district spends about \$2.7 million per year in professional development. It trains new teachers and then they leave, especially the ones without tenure, and find employment elsewhere. During the last year the district had fifty-three first-year teachers, forty-eight second-year, and thirty-six third-year. The district is always behind because it has new teachers who are not high-impact teachers or highly effective teachers. The average teacher in the district has only four to five years of experience.

The district is making progress in test scores, although they are well below where they should be. Twenty-seven percent of students are meeting expectations, and 73% are not, although 24% are approaching expectations. Lakewood is below the state average, although the students and teachers are working hard. The district keeps getting loans and issuing RIF's and it has become a cycle. The students' homes are not stable, and the schools are not stable. Lakewood has no industrial-arts programs; wood shop and auto mechanics were given up years ago. The gym is beautiful but has been there forever.

²³ Counting these students, total district enrollment is 6,492 students. Approximately 30,000 more school-age children reside within the Lakewood district but attend non-public schools.

Pursuant to statute, the district must certify that its budget provides a thorough and efficient education. And she certified the budget. But no one could tell her what a thorough and efficient education was: she did not know if it was counselors, libraries, or educational curriculum and instruction. As for facilities, the BOE could put the issue to the voters by special questions to seek additional funding.

As for Partnership for Assessment of Readiness for College and Careers (PARCC) testing, Lakewood is trying to raise PARCC scores. They have seen slow and steady growth with incremental progress. They have met Every Student Succeeds Act (ESSA)—the successor to No Child Left Behind—accountability in all targets but for absenteeism. ESSA facility accountability targets were met except for the middle school, which is overcrowded. Lakewood High School is considered a priority school because of its low test scores.

Graduation requirements are set in the regulations and require twenty credits in language arts, and fifteen in mathematics, algebra, and geometry. The district has all courses to meet graduation requirements for its students.

Lakewood has planned a response intervention reading program and career academics in high school (learning cohorts). The middle school has robotics, coding, horticulture, and journalism. It also has new technology classrooms and Apple TV. In foreign languages, only Spanish is taught in school, and that is what all students have chosen, but other languages could be taken online, although educationally it would be better to have a teacher in a classroom.

The library is open three days per week and a paraprofessional is in charge. The school provides remedial work and a homework club, and some advanced placement and honors classes in English, math, and Spanish.

For vocational-technical education the school has some in-house career programs and sends some students to the Ocean County Vocational Technical School (OCVTS) and career field. It is difficult to get into the OCVTS program, as it requires good grades

and has a strict attendance policy. Some students do not want to leave the district high school. Lakewood does not have the money for its own vocational-technical program.

Lakewood offers graphic design and fashion through Perkins grants; the school has a culinary and TV classroom (Title I and MAC rooms²⁴), recording arts and media and data entry, plus an ROTC program. Other offerings include computer classes; library skills; art and music; chorus; band; and orchestra. Title I was cut this year and some after-school programs were cut.

Lakewood's athletic director was cut; now they have a part-time athletic director who is not an employee of the district. The New Jersey State Interscholastic Athletic Association (NJSIAA) says there should be a full-time athletic director and secretary, but both were cut from the budget.

Winters identified Lakewood's problem as not having enough highly qualified teachers, because of low salaries and high turnover.

Lakewood was always in need of Title I assistance. The high school was a priority school, but this year they received only \$3 million in Title I funding, which paid for training, professional development, computers, reading, and materials.

The 2017 New Jersey Quality Single Accountability Continuum (NJQSAC) report showed that Lakewood passed in personnel and operations, and had less than 80% in instruction and programming, governance, and fiscal compliance. Instruction failed because it was based on the PARCC scores, which were low. Fiscal compliance failed because the budget has a deficit. The county reconfigured the budget and told them to apply for an equivalency waiver.

Robert Finger testified that he has been Lakewood's interim assistant business administrator since October 2017. He had previously been employed as business administrator and Board secretary in Lakewood from February 2008 to November 2010.

²⁴ Title I provides a grant for educational services for low income students, and MAC is a computer application that aids learning.

He worked for the DOE for fourteen years as an auditor, was county business administrator in Hudson and Essex counties, and served as tax auditor for the New York Department of Labor.

Finger left Lakewood in 2010 when there were no fiscal monitors in place and the audit showed a \$5 million surplus. The fiscal monitor appointed by the State arrived in 2014.

Finger reviewed Lakewood's annual audits and budgets from 2013 to the present. Starting in 2013–2014, Lakewood was going into a deficit, which was then about \$6.5 million. For 2016–2017, it was \$4.3 million. For 2017–2018, Lakewood received a \$8.6 million State aid advance. The hope is to spend less to bring down the deficit. He did not know if other districts received loans to meet their budgets.

As of December 31, 2017, Lakewood had more revenue than expenditures, but had the potential for another deficit. He looked at revenue and tuition and went through special-education and out-of-district costs. In some cases, students had not been accurately counted, and there were more than appeared enrolled.

The DOE relies on information received from the districts and reconciles this with the actual student count. Each year, the DOE issues bills to the districts for the estimated tuitions that the boards of education paid as tuition. Sometimes deficiencies showed up later and then the district would get re-billed. Lakewood received re-bills for 2016–2017 of almost \$2 million, for which Lakewood must reimburse the state within two years.

Finger reviewed the 2017–2018 school year budget. He noted that the budget includes “undistributed expenses” which are, for the most part, expenses paid for public school students who go to special-education out-of-district placements, and for support services. When the budget was done for 2017–2018, Lakewood needed a \$8.6 million advance State aid payment, plus \$1.6 million from Lakewood Township toward sports and courtesy busing and related services. He did not know if Lakewood Township had a budget surplus.

For transportation, Lakewood gives the State the mandated amount for the LSTA program, and if the cost of transportation is less, the district pays \$1,000 per student as aid in lieu for each student bused by the LSTA. The LSTA program will be reviewed in 2019, as he thinks it should.

For 2017–2018, Lakewood budgeted \$20.2 million for the LSTA program. Enrollment in October 2017 was 6,090 on the public school rolls, plus another 361 who had been placed in private schools, 17 sent elsewhere, 173 received from elsewhere, and 6 in State facilities, for a total of approximately 6,600 students in the public school system. The general-fund operating expenses for 2017–2018 was \$143,455,116; \$27,600,000 was for transportation, with \$20.2 million going to the LSTA. Lakewood pays for special-education services even for those who are sent out of district. The budget showed \$31,963,753 for special-education expenses, but that might not have included some extraordinary services.

The budget process starts in mid-March when the proposed budget is advertised; in April-May, they have hearings; and if the budget is approved, it becomes final.

Lakewood Township has approximately 37,000 children who attend school; 6,000 are in the public schools, and the rest are not. The financial situation in the Lakewood public school district is unsustainable due to these unique demographics. It is a 6,000-to-30,000 disparity. In Teaneck it was 4,200 public to 2,200 non-public. Lakewood Township has five times the number of students in non-public schools as in public schools. This has a major effect on transportation, as the district pays \$1,000 for each bused child.

Finger compared Lakewood to nearby school districts located in Freehold Borough, Jackson Township, Toms River Township, and Brick Township. Looking at these four, the cost of transportation and tuition for out-of-district students averaged about 4–7% of the budget. In Teaneck, with many students attending sectarian schools, it was 9%. Special education tuition and transportation could be 8–14% of the budget, but in Lakewood it was 38%, and the projected amount for 2018-2019 is 40%. These expenses—transportation for public school and non-public school transportation, tuition

for out-of-district placements for special-education placements—are mandated by the State.

This is unsustainable, because next year tuition is going to increase \$7–8 million, plus another \$3–4 million for transportation. Districts are permitted a 2% tax-rate increase, and for Lakewood 2% is about \$2 million. For 2018-2019, without tax increases and more revenue, \$17–23 million in additional funds would be needed without full funding of the SFRA or in extraordinary aid. This does not even include raises for district teachers or the \$2.2 million the DOE has deferred for paying back previous loans, so there could be a \$19–25 million shortfall. Even if the SFRA were fully funded according to the formula for public school students, the district would still be underfunded for its expenses.

Finger analyzed the cost of special education and transportation costs. About 35–36% of the budget is for special-education costs. For 2016–2017, the operating budget included \$52 million for special education. The total in 2017–2018 was \$52,438,739, and for 2018–2019 it was \$58,622,034. Additional students are coming into Lakewood Township constantly, sometimes three per day, or fifteen to twenty per week.

The transportation aid received for school year 2017–2018 was \$4,199,793. This was calculated by the State based on 2,336 public school students, 730 special-education students, and 19,174 non-public school students, for a total of 22,240 students. Mandated non-public school transportation is \$1,000 per student. In 2017–2018, \$28.7 million was spent on transportation. The State reimburses about \$10 million per year for transportation, so the transportation budget is about \$18 million.

For 2017–2018, the combined cost of transportation and special education was \$49.4 million plus \$28 million, for a total of \$78 million out of the total budget of \$144 million. More than 52% of the district's budget goes for special education and transportation. For 2018–2019, the projected costs for special education and transportation are a total of \$88 million.

Every year Lakewood Township is adding 2,500–3,000 non-public school students who are eligible for transportation. He hopes the monitors are aware of these expenses. Next year's deficit is projected at \$17–23 million. The district is trimming at the edges to get the numbers down. This budget goes up about 10% per year. The anticipated 2017–2018 budget showed that tuition and transportation had gone up.

The district has a revenue problem. The State-aid funding formula works well for 99% of the state. It does not work for Lakewood because the district cannot contribute to its adequacy budget because wealth and ratables are taken into account when calculating aid. The district gets some equalization aid. Lakewood has a base of 36,000 students, where one-sixth of the students are in public school and five-sixths are not. The tax levy is not determined just by the 6,000 attending the public schools, but by Lakewood Township's population and ratables. There is a bigger pot of money in Lakewood Township. The tax levy generated \$96.9 million this year based on property taxes.

Finger was not aware that Lakewood Township's school tax rate was one of the lowest in the state based on equalization value and reassessment. The Lakewood BOE set the tax rate within a 2% levy cap. Although revenue is restricted to the 2% hard cap, a legislative determination, Lakewood Township voters could exceed the cap if they wanted to pay for things such as transportation costs as long as the money was not for mandated expenses. In 2016 voters rejected a proposal to exceed the tax cap to cover courtesy busing. If busing is provided for public school students, then it must be provided for those attending non-public schools. The budget does not pay for courtesy busing.

Until now, the State has deferred payback of advance aid, but David Shafter, a State monitor, told him Lakewood will have to pay back \$2.8 million in 2018–2019, and the State has been recouping it since September.

In projecting the 2018–2019 budget, Finger understood that the LSTA would still be in place, but it would be up to the Commissioner to continue it and to include it in the budget.

The count from the District Report of Transported Resident Students (DRTRS) was 19,174 students effective October 15, 2016. If there were more students, the district would receive more transportation aid.

The district received \$4.2 million in transportation categorical aid and was reimbursed that year for mandatory expenses: the State reimburses \$290 to get to \$1,000 per student. Basically, the district pays the first \$710 per student and the State picks up the next \$290. If the LSTA were abolished, he did not know if the district would be able to run buses for less than \$710 per student, because it would depend on who provided the buses, the bids, etc.

If Lakewood is receiving less money because the State is taking money back from the loans, cash flow will suffer. There is a line on the budget for all revenue from all sources, including DOE State-aid advances. They work with the state monitors and would be seeking \$17–20 million in aid for the next school year.

Malka Spitz-Stein is the supervisor of STEM (Science, Technology, Engineering, and Math) for Lakewood and she oversees Sections 192 and 193 grants. She entered the district in 2007 and has been in Lakewood for ten years. Before that, she was a teacher in Long Branch for seven-and-a-half years. She supervises seven schools in the district as curriculum supervisor of math and science to make sure the curriculum is implemented correctly in class.

Spitz-Stein works on curriculum; writes lessons; gives professional development; and visits classrooms and gives feedback. Some districts have superintendents for grades six to twelve, but Lakewood has had no assistant superintendent in this area since it eliminated the position five or six years ago. Spitz-Stein is involved in the hiring process for science and math teachers and in the evaluation of teachers. After teaching, the focus is on the curriculum and strategies. As teachers progress, they are trained.

A tenured teacher is rated. More experienced teachers are better for students. It takes about four years to have actual professional development and to be able to

implement a program. At the five-year mark, a teacher gets to know students and understand them.

In the high-school mathematics department, four teachers out of thirteen are tenured. Sixty percent of high-school math teachers are non-tenured. Teachers who are non-tenured have less experience; they need training; they do not yet have methods to reach individual students. Teachers need to differentiate with their students.

This year there were three first-year teachers (new) due to turnover in the math department; two second-year teachers; and three teachers who are nearing four years of experience.

Spitz-Stein has concerns about holding on to teachers. If teachers are not confident that they will have a job at the end of the year, it leads to teacher instability and the school is not stable. The median teacher salary is \$52,046. When teachers leave Lakewood, they are receiving salary increases of \$10,000–15,000 per year.

Lakewood has had twenty new hires in math since 2011. Teachers new to the district have been certified by the DOE and could have experience in other districts. Only two teachers have received tenure since 2011, and two already had it. Lakewood complies with New Jersey tenure law: in 2015-2016, only 2 out of 396 teachers were rated not effective, and in 2014–2015, only 2 out of 304.

In the spring of 2017, only 7% of high-school students were tested as proficient in math, and students are in need of teachers to get them to learn algebra 1. In the sixth and seventh grades, there are twenty to thirty students in math and science classes.

PARCC target benchmarks showed that in math, at the sixth-grade level, 12–13% of the students were proficient; at the seventh-grade level, 14%; and at the eighth-grade level, under 20%. Twelfth grade proficiency was under 10%. The high school did not meet its target level, but the elementary school did.

Statewide PARCC results were 54% for elementary students and 23% for high-school students. In Lakewood, elementary grades three to five showed that 20–25% met their target, as compared to statewide, where in the same grades, 47% did. Judging from the PARCC results, the students are not on grade, although performance improved in school years 2015–2016 and 2016–2017. Grades three to five showed significant improvement in math.

The State sets the target; the district did not reach a target in math for middle school. Students in science and math are not on grade level. Based on scores from the State, math is showing a downward trajectory; they need to make sure that elementary students have their needs met and that these projections are addressed.

Five or six years ago Lakewood had more than twenty interventionists who would provide services (four were for math but the math ones were eliminated). It would help students to have them back. English/language arts teachers were also cut. Readiness is a computerized intervention program that was used last year and was reliable.

In technology and English, students have computers to use from elementary school. In middle school, one quarter of students are enrolled in robotics, which is paid for by Title I. Success in high-school algebra is a predictor of graduation, but students in algebra 1 are not on grade level.

Teaching in kindergarten through grade 12 is based on the State Learning Standards. She writes curriculum and lessons consistent with State standards. Teachers never receive education in these standards, so they need to learn on the job. At Stage 1 for the PARCC, standards are addressed for the children's level; at Stage 2, they are rolled out to teachers who were trained on what to say and how to get kids to use generalized knowledge; and at Stage 3, classes are observed and teachers receive feedback. Stage 3 is the most critical, as everything must be done at grade level and get implemented. At elementary school, every teacher must be observed for any needed follow-up and feedback. They want proficiency in every child, and Lakewood was performing well below standard.

Marcy Marshall testified that she is in her fifth year as principal of Lakewood High School. She entered the district in 1996, and worked as assistant principal, director of guidance, counselor, and teacher. She has two master's degrees in administration and education. The student population of the Lakewood public schools is 85% Latino, and less than 5% Caucasian; the rest are African-American. One hundred percent of the student body receives free or reduced lunch.

The high school has lost programs in the past eight years, including auto mechanics, graphic arts, and metal shop. The rooms were repurposed for other uses, and BOE offices are now located there. They now have culinary, photography, and fashion design, among other programs, funded by Perkins grants. Federal funding in 2016–2017 was \$1.5M; for 2017–2018, it was \$183,000. As a consequence of the financial loss, teachers' stipends and programs were cut; after-school programs were affected; twilight academy (a program from 2 p.m. to 7 p.m. with math consultants) and college visits were cut.

School starts at 7:00 a.m. for the 1,200 students in the high school (350 freshmen, 320 sophomores, 280 juniors, and 220 seniors). (Prior to the 2016–17 school year, school started at 7:15 a.m.) It is early, and it is a problem. Many students have jobs after school, and when they start school early, their attendance is affected; they have chronic attendance problems because of their jobs. The buses come at 6:15 a.m. Some students come to school late. The school has eight security guards plus metal detectors. Incidents of violence are mostly fighting. The high school building dates from the 1970's.

The State graduation rate is around 90%; the rate has slowly been rising in Lakewood from 74.8% to 75.4%. The dropout rate was about 4%, although some students drop out and then return. Ten to 12% of the students go to a four-year college and 40% go to a two-year college.

The school has successful athletic programs and about 400 student athletes. In the fall, they have volleyball, football, field hockey, and tennis; in the winter, bowling, basketball, and track; and in the spring, softball, baseball, track, and tennis. Lakewood Township, not the BOE, funded athletics this year. Before this it was in the school budget

and comparable to what is being presently offered. The school has full-time coaches who are teachers who coach after school, and a part-time trainer. The athletic director is a teacher of physical education and health who receives a stipend as the athletic director. Prior to this, the school had a full-time athletic director and trainer who were part of the budget. The athletic program is important for students, as it provides a safe place after the school day ends. Athletics gives them a sense of family and something to do.

For foreign languages, Spanish is funded by the district. When Marshall started, German was taught, and many years ago, they had French.

Marshall reviewed the New Jersey School Performance Report for school year 2016–2017, which is put out by the State in October or November. The data comes from the reporting districts and the schools and includes the graduation rate, absenteeism, and shared instructional time.

About 120 students at most went to the vocational-technical school during junior and senior years. There is a charge to Lakewood for this that is paid from the district budget.

Most teachers started right out of college, but each one is certified by the DOE and qualified by the BOE. For school year 2017–2018, the high school had eighty-four teachers, of whom approximately thirty to forty were non-tenured. (Nine were first-year teachers, ten were second-year, and fifteen to twenty were third-year.) Fourteen teachers left last year, some tenured and some not, for stability and better pay. This year seventy teachers stayed. Lakewood is one of the lowest-paid districts in the county. Monmouth County pays higher salaries. Teacher retention is a problem, as teachers want stability in their careers.

Marshall spends her summer trying to find experienced teachers, but mostly she gets new ones, which negatively affects the students, who need consistency and stability. Teachers must be rated in the evaluation system used by the State, and Lakewood is in compliance. In school year 2015–2016, only two were rated as non-effective.

The district has four curriculum supervisors: STEM, ELA (English Language Acquisition) & social studies; ELL (English Language Learner) and ESL; and special education. When she started there were more, and the areas of supervision were very content specific. When these positions were lost, the impact was apparent, as she could see the difference because she did not know specific content. She can tell good teaching, but it helps to know content. They do not always have a content specialist to do the review. The STEM supervisor will observe the non-tenured teachers.

In 2007, there were one or two assistant superintendents who helped with curriculum and instruction; now there are none.

Seventy-five percent of the student body comes from non-English-speaking families; less than 15% are non-English speakers. ESL has one teacher, and the district funds a newcomer program for twenty students.

Every other district has remediation and intervention specialists where students get extra support, but Lakewood does not have this program. They do have a class for remedial math in ninth grade. Lakewood is struggling with attendance, language, and test scores.

Lakewood has twelve to thirteen special-education teachers who teach eighty to eighty-five students with IEP's, for in-class support and resource pull-out, but they do not have teachers in all areas of specialization. There are about seven students to a teacher. They have in-class support for language arts (LA), and resource pull-out in math and LA (every grade), and for science and social studies (ninth and tenth grades). They need extra teachers. If a student is classified in LA, they need support in other classes. But funding is why they do not have them.

PARCC scores were improving. Lakewood High School applied for an equivalency review for its PARCC assessment scores in its next improvement plan and has been identified as a priority school. Other than chronic absenteeism, it has met its ESSA accountability goals.

Perkins grants are provided for vocational-technical education. Lakewood does not have an in-house vocational program, but Jackson does, and Toms River will open a career center in September. The high school offers two art classes, TV production, MAC labs, media center, photography, and recording arts.

Lakewood offers courses in all requirements for graduation: twenty English courses; fifteen math, geometry, algebra, and pre-calculus courses plus advanced placement (AP) courses (eleven students); fifteen science, chemistry, physics, AP physics 1 (twenty-five to thirty students) and AP physics 2 (nine to ten students) courses; and fifteen social studies, United States and world history, and AP United States history (fifteen to twenty students) courses. The high school also offers financial and entrepreneurial skills; online language; Spanish; AP English language and composition; AP English literature (thirty to fifty students); AP Spanish (ten to twelve students); New Careers academy program; STEM, business, 2 pathways; Oceans 1 and 2—marine studies; horticultural and greenhouse; music, film, and performance ensembles; and band, choir, and orchestra. No student is presently taking an online program offered by and paid for by the district. The BOE pays for choir and music programs, and art classes. Students have a fine-arts requirement for graduation, and the foundation class is the one that most students take.

In the AP courses, students received grades of 3's and below; none passed the AP physics course. For AP college credit, colleges require grades of 4 or 5. One student received a 4 or 5 in AP Spanish, and one did well in AP physics.

Danielle Farrie, Ph.D., has been the research director for nine years at the Education Law Center (ELC) and works to enforce the rights of public school students. She is responsible for data analysis. Dr. Farrie has a doctorate in sociology from Temple University. She did analysis for the New Jersey Supreme Court in Abbott XXI, for the 2011 fiscal year, about the impact of the budget on students, and her report was accepted by the Court. She prepared a report at the request of the petitioners. She has never been to Lakewood Township.

The ELC prepares a school funding report annually. Dr. Farrie does research and writing on school funding and has worked with Professor Baker on school funding and educational outcomes. She worked with another author on a book chapter tackling school-funding equity around the country; her chapter was "From Rodriguez to Abbott." She wrote about the SFRA and Abbott. A separate report identified disadvantaged students in markets. A 2016 report discussed school funding, from resources to educational outcomes.

Dr. Farrie holds no degree in accounting or public funding, and she is a researcher, not an educator or a business administrator. Her dissertation was on school choice and economic segregation. She previously worked in the Institute for Public Affairs which does not deal with financing. She began working on school funding when she started work at the ELC. She has no experience in developing educational policy or implementing policy. She does not do professional analysis and does not put together a school budget.

She has testified in court before and was accepted as an expert in educational funding.

Dr. Farrie is familiar with the SFRA standards, which are linked to a weighted formula. The SFRA determines the level of funding to provide students an educational curriculum. It is the base cost for regular education plus additional funding for special education, at-risk students, and poor students. The funding level is divided into the local share and the State share (called equalization aid). The adequacy budget is the local fair share and the State equalization aid. The adequacy budget is supplemented by categorical aid paid by the State to cover the costs of transportation, security, and special education.

For special education, the SFRA pays one-third of the cost through categorical aid, and two-thirds as equalization aid. The local fair share is based half on income and half on the equalization of property values in the district.

Dr. Farrie studied Lakewood's school funding through the State aid notice. The base amount per pupil is \$11,042 and is the same for all students. Those at-risk students receive the base plus 57% more. There is also a geographic cost adjustment.

The SFRA uses a census-based formula; it assumes an average classification rate for special education of 14.92%, and Lakewood is funded as if it had an average classification rate. If the district has a greater percentage of special-education students, then the district is underfunded. Speech is funded separately from special education; the state average is 1.63%.

Dr. Farrie was not sure how the average classification rate was calculated. If the average were determined by the district, then Lakewood would be higher.

The State calculates how much a district needs to raise as local revenue to meet its adequacy budget. The local fair share is how much residents are willing to pay to fund the local schools. Equalization aid is adequacy budget minus local fair share.

Special education is paid at one-third categorical aid and two-thirds from the local fair share. For security aid, low-income districts receive more. Transportation is also paid as categorical aid. It is based on population and non-public school students, plus aid in lieu based on enrollment in the district and the length of bus routes.

SFRA funding was phased in as State aid for one year; it was reduced in the second year, was cut in the third year, and has been flat-funded since. Most districts have not received SFRA aid.

CAP adequacy is defined as the adequacy budget plus other categorical expenses.

Titles I, II, and III funding do not have any bearing on SFRA, and SFRA does not include federal funding or non-public funding. The SFRA was declared constitutional. However, Lakewood Township is unique, as its public school population is not reflective

of the school-age population. The majority of Lakewood Township's students attend non-public school.

For special education, a similar demographic is present. The adequacy budget is based on district enrollment and special education is funded on a percentage basis. Lakewood is different because special education and transportation are mandated costs for the district. Classified students receive services through IEP's. There are three reasons behind Lakewood's higher special-education costs: a large population of special-education students; a large number of students with the highest cost of disabilities; and higher-than-average out-of-district placements, which are more expensive.

The special-education student population differs from the general-education population. The comparison is to the school-age population with race and age, as compared to special education. White students are more likely to be classified, which suggests that some white students opt into the public school setting in order to get special-education services.

Lakewood's classification rate is above the state average, but those decisions are made by the school district. Some districts are even higher than Lakewood because the statewide 14.92% classification rate is an average. She did not remember if the district provided mandated special-education services, nor was she familiar with the State funding them through Sections 192 and 193.

The State rate is based on the average number of classified students, an average number of high-cost disabilities, and the average cost of school. Lakewood places more students in private placements, so its special-education costs are higher.

Transportation gets paid per pupil. Lakewood's transportation costs exceed what the formula provides for the district. Lakewood had a pilot program for transportation, the LSTA, but funding did not capture the total cost.

New Jersey has one of the best educational funding systems in the United States. It is a state with high funding for low-income districts. The New Jersey is fair and is second in the nation in school funding. Her report was a State report, not a local one.

The SFRA is a national model of school funding, but Lakewood is an extreme case; this has caused constant fiscal distress, with transportation and special education eating up the budget, so the money must be taken from other areas. The decline in academic performance correlates with it. The district is academically performing in the lowest 5% of all districts across the state in nearly every tested area, a significant decline in relative performance. The SFRA does not dictate how money should be spent, but some costs are mandated, such as special education and transportation. These two areas get their funds first and the rest of the budget has to support all other education expenses. Lakewood spends far less on regular education than the formula suggests is adequate. Compared to districts with 3,500 children or more, Lakewood spends about 50% less than other districts in classroom-instruction costs.

Changes are necessary in the funding structure: it must take into account that the Lakewood school population is not reflective of the number of students who live in the district and attend non-public schools. The funding is not adequate for Lakewood, especially in special-education costs. Lakewood spends about \$40 million more than a district its size should spend due to special-education and transportation costs.

Based on Dr. Farrie's analysis, the State does not pay enough because it is per-pupil aid in theory, but not in practice. The district received \$4.5 million in 2017 for extraordinary aid for special education, and received \$4.1 million in 2016, and \$3.1 million in 2015. It was 2.4% of the State's extraordinary aid in 2016, and 1.9% in 2015.

New Jersey has 1.4 million public school children. Lakewood has 6,000, representing one-half of 1% of the state population, but the district received 2.4% of State extraordinary aid for special-education students. Dr. Farrie believes special-education aid should be based on the percentage of children in special education. Students placed in out-of-district placements are enrolled in the public school system. These students are

counted for equalization aid, categorical aid, special-education aid, and extraordinary aid. When she said Lakewood was underfunded, she considered extraordinary aid.

The SFRA provides for transportation per pupil, which is mandated under the SFRA based on distance from school. The formula provides the same amount, but the district does not spend that amount. Lakewood was forced to pay for transportation for non-public school students, money that it could be spending on public school students. She was not familiar with Lakewood spending money on public school transportation. She was not familiar with the Bacon cases in particular. Lakewood had been spending too much on courtesy busing and non-public school transportation. Dr. Farrie stated that Lakewood's transportation cost exceeded the State formula, but it was contingent on local funding and that was included in the adequacy budget.

She had no idea if Lakewood could raise additional funds. The State does not restrict local fundraising, but there is a 2% annual cap on how much the municipality can raise through taxes, and so it has limited ability to raise funds. She was not familiar with whether Lakewood Township had attempted to raise funds through special questions on the ballot.

Dr. Farrie's report stopped analyzing scores in 2014; she did not dispute that PARCC scores were improving, but it would not have affected her opinion.

Dr. Farrie concluded that the SFRA cannot address Lakewood's conditions, and that changes to the SFRA formula were necessary to ensure that Lakewood Township's public school students received a thorough and efficient education. Changes were needed to the SFRA as it functions in Lakewood. Working to reduce out-of-district special-education placements would help address Lakewood's budget, although she wants students in their proper placements. Working to make the walk to school safer in the Township might save some costs of hazardous-route busing.

She believed that the Lakewood school district was an outlier, although she had not studied other districts in detail.

David Shafter is a state monitor in Lakewood. He has a bachelor's degree and a master's degree in accounting; he is a certified public accountant and a certified school business administrator. He later worked in Willingboro, New Jersey; he then became a state monitor in Beverly, New Jersey. He has also worked in Camden for two years as interim business administrator, then worked in fiscal compliance.

Shafter is employed by the DOE to go into distressed school districts to monitor them. He has worked in Lakewood since 2014 as a fiscal monitor with Michael Azzara, who arrived there first. Shafter reports to Glenn Forney in the DOE, who is responsible for all state monitors.

The State uses NJQSAC evaluations of school districts for determining performance and to see if a district is below level. Lakewood is in a deficit.

As a state monitor in Lakewood, Shafter attends board meetings, and is involved in finances, budgets, purchasing, and grants. He approved the school year 2016–2017 and 2017–2018 budgets, prepared with the assistance of an able business administrator. At the time of this hearing, the 2018–2019 budget was being worked on with the business administrator.

When Shafter was first placed in Lakewood in the fall of 2014, there were concerns with record keeping and finances. There had been poor record keeping and there were issues with purchase orders. Financial records were not accurate, and the budget was about 50% accurate. There was a lack of purchase orders for out-of-district placements. Monthly records were not closed timely and ran three to four months behind. On other purchase orders, when a line item was at its limit, items were charged elsewhere. Lines were over-encumbered, and a report would show negatives. The records could not be relied upon; the position-control roster was not reconciled with the names of staff. This presented problems for tracking expenditures.

Corrections to the budget started during the 2015–2016 school year, and this affected planning. The budget was then 90–95% accurate, as it was corrected by 2016–2017 with correct purchase orders and funds allocated for anticipated expenses. He has

not discovered any expenditures that were not legitimate. Over \$1 million in extraordinary aid was found and corrected.

When he first arrived, the *Comprehensive Annual Financial Report (CAFR)* findings showed the numbers were off. Ideally, what is wanted are no findings in the CAFR. Having twenty-three to twenty-four findings in a CAFR is a high number. Since he has been the monitor, the number of CAFRs has gone down. This year it was reduced to eight, which was a definite improvement. The issues he identified have been improved.

Also, when he first arrived, some special-education students had not been counted correctly, and some students placed in-district had not been included as special education students. Some students had been eligible for additional financial aid but as no application had been made for financial assistance for them, money had been left on the table. That problem was also corrected.

Also, when he first arrived, Lakewood provided courtesy busing, but that has now stopped. Now Lakewood provides non-public school busing through the LSTA. The District pays a per-pupil amount of \$1,000 per year. Prior to formation of the LSTA, the cost per pupil was \$650. The cost has gone up under the LSTA for two reasons: the actual cost increased from \$650 to \$710 in the first year, and the number of students being transported increased.

The first budget he worked on was for school year 2015–2016 and was extremely responsible. No deficit was apparent at first, but in October/November, they realized there would be a deficit for the rest of the year concerning transportation. Bids went out and were supposed to save money, but they did not.

The referendum to fund courtesy busing had been defeated and the DOE directed Lakewood to continue it. The State advanced \$4.5 million in aid for this. It would have been dangerous to stop busing for the children because of traffic and some hazardous routes, so that was the reason to cover the transportation deficit.

For the 2016–2017 budget, they realized they had a deficit, and that for the first time there would be layoffs. The budget was \$5 million short, so the State loaned Lakewood \$5.4 million to avoid layoffs and increases in class size. Without the loan, teachers would have been released. Courtesy busing was eliminated.

Lakewood was short of funds because of increases in the costs of programs, the 2% tax cap, and mandated costs for special-education placements. Transportation costs increased for the LSTA. Those costs had been less than the cost assigned to the LSTA and was more than tax increases could sustain. The budget was cut as much as possible, an assistant principal was let go, and anything that could be taken from the budget was done, such as leasing textbooks. Leased/purchased buses brought some transportation into the district.

Transportation for 2016–2017 was very efficient, and the budget was approved by the monitor. They started tiering (starting school at different times) and filling the buses. Lakewood High School started at 6:45 a.m. and provided breakfast before school; 7:45 was the second tier, and 8:30 was the third.

The 2017–2018 budget was never passed. It was approved by the monitor in May/June (usually submitted in March and approved by May). The budget was not approved by the Board because “it did not provide the services they wanted.”

The 2017–2018 budget had some deficit, but by March the deficit was \$13.5 million. After the budget was approved, the superintendent did not recommend the budget and the first draft was not approved. (It included cuts to guidance, cutting 80–100 teachers, and cutting the library, extracurriculars, and athletics.) Class size would be in the thirties in elementary school, and in the forties in the middle school. The budget was finally adopted after negotiations with the DOE, with \$11 million cut and \$2 million for paybacks of previous loans waived for one year. Some cuts remained, some athletics were cut, some co-curricular activities were cut, and some other reductions were made in non-public school-related services. After the State’s loan of \$8.5 million, the budget was acceptable in its bare-bones form.

The district cannot cut any more from special education or transportation, so cuts come from regular education and administration. New Jersey has been a model for class size. The average in grades K–1 is twenty-one students; in grades 2–8, twenty-two students; and in grades 9–12, twenty-three students. But in Lakewood, it is twenty-four to twenty-five in grades K–1, and twenty-eight to twenty-nine in grades 2–8. The effect is an increase in class size, and this affects education, administration, libraries, media, etc. They do not want to cut security.

Lakewood does not have a spending problem; it has a revenue problem. Shafter goes over the budget carefully; he makes sure the budget is correct; he looks at projections. He believes that on the expense side, the budget is not an issue.

Some special-education classes have been opened in Lakewood, with additional classes for special education and pre-school disabled. In 2018-2019 the pre-school-disabled class will be expanded, and it is in the budget. Instead of spending for out-of-district schools, keeping students in the district (first graders) will save money. That program started this year. Beyond first grade, the district looks for least restrictive environment. It is hard to bring students back from previous out-of-district placements. By the district starting programs for younger students, a long-term solution is provided.

Comparing Lakewood to Abbott districts, Shafter noted that he had previously worked in Trenton and Camden. Camden is urban and Lakewood is not considered urban. Camden has a large public school population and a smaller non-public school population. Camden had no problem matching expenditures to revenue—it was easy to balance its budget. One hundred percent of both Lakewood and Camden school students are entitled to free breakfast and lunch.

Lakewood has a unique situation in its student population. Usually the number of public school students in any district is greater than the number of non-public school students. For example, Camden has 13,000 public school students, but only a small percentage of students attend non-public schools. East Windsor has the same situation. But in Lakewood there are 6,000 public school students and 30,000 non-public school students.

The challenge is that when taxes were raised, they covered public schools and State aid was increased. But now, in Lakewood Township, the number of public school students stays about the same, while the non-public school student population goes up about 10% per year. This affects the budget in transportation, because Lakewood has to pay the LSTA \$1,000 per student per year, which actually comes to about \$710 per student after State aid is factored in. Usually taxes and State aid are sufficient for most communities to cover this expense, but in Lakewood, even with categorical aid and equalization aid, it is not enough because the equalization aid and the categorical aid are frozen. It is not enough because increased taxes do not cover the costs.

In 2016–2017, an additional 2,000 non-public school students needed transportation. The number for 2017–2108 was not then known. Out of the increased number of children living in the district, some will enroll in public school and need placement and transportation. There are over 100 non-public schools in Lakewood that are not calculated into categorical aid.

For 2017–2018, Lakewood received a \$8.522 million loan. Two million dollars was for deferred repayment. One million dollars was received from the Township to pay for athletics.

The budget for 2018–2019 was then in preliminary stages and showed a potential deficit of \$17 to \$23 million. If nothing changed from the 2017–2018 budget, and no salary increases were included, plus \$3.2 million to be paid for increased benefits, plus \$5.9 for out-of-district tuition, plus \$2.283 million for transportation, plus charter-school costs of \$728,000, the total projected deficit was \$23,290,988. The district already owes the State DOE \$8.5 million, plus \$4.5 million, plus \$5 million, for a total of \$18 million. Loans given by the State must be paid back within ten years, and a state monitor must be in the district as long as the debt is outstanding.

On February 5, 2018, a letter was sent to the acting Commissioner indicating that Lakewood did not want to fire teachers. The monitor has the power to fire teachers, and it is part of his role, if necessary. The budget must be completed by the end of March,

and the district has two options: to leave the budget unbalanced and to write to the DOE for more assistance, or to reduce the budget line by line the way they did the previous year. As for the first option, they can ask the State for more aid to balance the budget. The DOE refers the budget to the county business administrator, who reviews it. By law, the budget must be balanced. In 2017, he made suggestions. The letters for a reduction in force went out. There is time yet to resolve issues, so those letters may be sent and retracted later. He had no opinion yet of what he would do for school year 2018–2019. Each year stands on its own.

The local fair share in SFRA is broken down into two categories by weighted enrollment. The cost factor is how much it costs to educate each student. The adequacy budget is the local fair share without equalization value times a percentage of gross income. State aid is supposed to make up the difference. Adequacy has nothing to do with local fair share. All educational aid is controlled by the Legislature. Categorical aid is frozen; it is set by the Legislature's annual appropriation budget. The amount of equalization aid, the 2% tax cap, and the LSTA are all controlled by the Legislature. Lakewood Township has no ability to raise taxes and is at the 2% cap. One special question on the ballot to raise taxes failed by a huge margin.

Shafter has not spoken with Lakewood Township about contribution to the school budget. One thousand dollars is the State-aid amount in lieu paid to parents of non-public students not transported. A bid is rejected if it costs more. The \$1,000 is calculated with the first \$710 from the local district; the amount from \$884 to 1,000 comes from the State.

Courtesy busing for students in K–8 is one-half to 2 miles and for grades 9–12 it is one-half to 2.5 miles. Courtesy busing now costs Lakewood Township \$1.3–1.5 million per year, but if it were eliminated, there was no guarantee that Lakewood Township would provide the funds to the Lakewood public schools. Courtesy busing could be reduced if sidewalks were added, crossing guards were increased, and hazardous routes were reduced. In summer 2016, a Lakewood consultant met with officials to plan to increase sidewalks, and there was some discussion about this.

The budget is very tight and has no room for cutting. Lakewood needs increases in revenue, either increases in State aid to full funding or increases in taxes. Lakewood Township could use its surplus, or a formula so that some portion of those non-public school students could be counted in the adequacy budget.

If Shafter had more money, he would balance the budget: he would pay for the transportation, health insurance, and charter school expenses that are required.²⁵ He would fund new facilities for Lakewood, especially for the middle school, so that special education could be offered in-district which would save the district money. Class size could be reduced, and languages could be offered. More money might be needed in the beginning, but savings would be afforded over time.

Michael Azzara started working for the DOE in 1978 and is the leading New Jersey state monitor. There are about ten monitors in the State. He was appointed by the Commissioner to be the state monitor for Lakewood, where he served for four years prior to April 2018. He oversees finances in the district and reports to the Commissioner through Glenn Forney.

He has forty years of experience in education and was the director of fiscal policy in Paterson, a state-operated school district, as an assistant superintendent. Previously he worked in Jersey City, Camden, and Newark. All were state-operated school districts. He has a bachelor's degree in business, and a master's degree in education.

Lakewood has a revenue problem, not a spending problem. They have made every reduction possible to maintain education. The budget is what is needed to get the county to sign off on it, and it really cannot be cut any more. Special-education expenses cannot be cut. Security cannot be reduced. A deficit is anticipated this year.

The State set up the LSTA and paid \$1,000 per student. Transportation was brought in house and it is efficient. Courtesy busing was put out for a \$6.2 million referendum to pay for it, but that expense was rejected by 98% of the voters the following

²⁵ Lakewood has one charter school with 150 students. The budgetary impact is minimal.

January. After that, courtesy busing was eliminated by the district; it is not on the table. They used a tiering system, but the bids were so high, they could not do it for the following year. So, the Legislature created the LSTA consortium for busing.

One referendum passed in the district which was for a building roof repair and an HVAC system.

Monitors have proposed ballot questions, but the Lakewood BOE has rejected them. Consequently, they did not bother to spend money on a referendum.

Lakewood Township was not considered an Abbott district, such as Newark, Jersey City, and Paterson, but shared some characteristics, such as free lunches, etc. The Abbott District Factor Groups (DFGs) were generally classified as district factor A and B.²⁶ Lakewood was not included as an Abbott district because it was not considered poor. The Abbott rulings were supposed to permit poorer districts to have sufficient financial support to meet district factor I-J standards, but there was not enough money in the state budget to ever meet the I-J standard. Abbott was abandoned in the SFRA.

The problem with the budget is that the school-funding formula is frozen. The non-public school population (30,000 children) is growing, and this puts stress on the budget, particularly on the costs of special education. The SFRA uses census data and calculates that approximately 15% of enrolled students require special education, but in Lakewood the percentage is so much greater. The Orthodox children attend non-public school yeshivas, but generally, if they have a learning disability, or need special education, they are enrolled in the public school district.

Lakewood spends about \$30 million for special education but is funded for only about half the classified students in the district. This puts a strain on the taxpayer, as the

²⁶ The DFGs represent an approximate measure of a community's relative socioeconomic status. The classification system provides a tool for examining student achievement and for comparing similarly-situated school districts in other analyses. Subsequent to the Abbott IV court ruling, the DFGs were also used to define the group of school districts on which Abbott v Burke parity remedy aid would be based. District factor groups range from A (the poorest) to J (the wealthiest) districts.

township has to support public school services. Other municipalities would not put the same strain on taxpayers.

This municipal overburden puts a strain on the tax base and the State needs to develop a budget that takes that into consideration. Thirty thousand non-public school students put a burden on the district, as that kind of population creates expenses that are not addressed by the SFRA school-funding formula.

Student enrollment drains the adequacy budget. The local fair share of \$102 million would not change, but the adequacy share could improve. Lakewood needs more revenue, whether it comes from the Legislature or Lakewood Township residents, but Lakewood is capped at what it can raise, although it has a large tax base. The amount of aid appropriated is controlled by the Legislature. The levy cap is also controlled by the Legislature.

When Azzara came into the district as monitor, he was familiar with aid in lieu of transportation. But after two years, he discovered that the district was sending money directly to non-public schools by checks and not to the parents. Lakewood did not own its own school buses in 2015, just a couple of vans. They saved money for the district by purchasing buses and doing some transportation in house.

The Legislature determines school financial aid based on municipal income and property wealth, which equates to an ability to pay for the local schools. But aid is also a product of how much the State has available to it to assist the local districts. The per-capita income of Lakewood Township is low at \$15,000, and less than half of the state average, but the median age of the population is also very low.

Melvin Wyns testified that he worked in the NJ DOE Division of Finance for thirty-one years. For thirteen years until his retirement from the DOE in 2001 he was director of the Office of School Financing, where he was responsible for all twenty-seven major school-aid programs in New Jersey designed to provide a thorough and efficient education. He reviewed school-aid applications, insured that payments were timely

made, and conducted audits. While he worked in the DOE, there were many major court decisions affecting school funding.

Following his retirement from the State, he went into consulting, until his final retirement in 2017. In his consulting firm, he has worked for municipalities and school districts on school-funding issues and regionalization issues. He has testified on the SFRA and regionalization and is considered an expert in Abbott XX and Abbott XXI for the Special Education Law Center.

In Abbott XX and Abbott XXI, the plaintiffs challenged the constitutionality of the SFRA, and the Supreme Court delegated those matters to a special master, Hon. Peter Doyne, J.S.C. In Abbott XXI, the third year of SFRA, the law was underfunded. Wyns testified as an expert in that case.

Wyns has continued to follow school funding since his retirement and has testified as an expert following his retirement. He had a consulting agreement with Lakewood from January through June 2018.

Wyns was accepted as an expert in school funding.

Wyns started with Lakewood in July 2003 and was a consultant to the BOE. From 2003 to 2018 he had various consulting contracts with Lakewood covering six to eight years. The tax levy was repeatedly voted down, and then the BOE would have to go to the township for funds. He was supposed to be an intermediary, but it did not work out that well. He is not now under contract with Lakewood.

After the SFRA was enacted in 2008, Wyns identified earlier problems that had not been resolved with the new law. The school-funding formula created problems for the Lakewood school district because of its unique distribution of sectarian to non-sectarian students.

Wyns reviewed the May 7, 2018, letter written to the Lakewood superintendent by Forney in which the State approved \$28 million in advance State aid for the 2018–2019

school year to balance the budget. This aid provided additional revenue to Lakewood as an advance (loan) for the purpose of enabling Lakewood to provide a thorough and efficient education to its students beyond SFRA funding. The State could only do this because Lakewood has a fiscal monitor in place. The revenue request must be certified by the State BOE to the state treasurer before the money can be released.

The May 7 letter was sent on the budget-cycle deadline for Lakewood to have its budget approved for the 2018–2019 school year. Absent this revenue, Lakewood would have had a shortfall and would have had to cut staff.

Wyns reviewed the letter of October 26, 2018, which indicated that when the Appropriations Act was passed, Lakewood’s funding was reduced by \$1,566,821 million, creating a shortfall. Lakewood was notified that it could not raise taxes; it could either cut the budget or apply for emergency aid for districts in financial distress. The letter approved the emergency request so the budget would remain sound. A total of nearly \$30 million in funding was provided to Lakewood by the State to provide a thorough and efficient education.

Wyns reviewed Commissioner David Hespe’s letter dated June 23, 2016, to the state treasurer, in which Hespe asked for \$4.5 million in order to provide thorough and efficient education for 2016–2017 school year. He also noted a similar request for 2016–2017 sent to the acting state treasurer requesting \$5.4 million in order to provide a thorough and efficient education for Lakewood’s public school students.

He reviewed the letter dated November 9, 2017, in which former Commissioner of Education Harrington asked for \$8.522 million for State aid for the 2017–2018 school year, again certifying that without it, the school could not provide a thorough and efficient education for Lakewood’s students.

All these letters showed that the four advances in State aid (loans) were made to assure that the students received a thorough and efficient education.

Lakewood needed the loans because the SFRA is not working in Lakewood and does not provide adequate resources to Lakewood. The DOE has been able to intervene because Lakewood has a fiscal monitor and the State has intervened to provide a through and efficient education.

The statute provides that the State-aid advances of \$4.5, \$5, \$8 and \$28 million must be repaid within a ten-year period out of future State aid; thus, money will be taken away from future students to serve present ones. This is money that must be paid back; this year they paid back \$3 million to the State from the money they received.

In school years 2004–2005, 2005–2006, 2006–2007, and 2007–2008, Lakewood received aid from the State for about four years through budget footnote language and received about \$1 million in grants from the State. There have been special appropriations for Lakewood in previous years. Then-Commissioner Librera was convinced that Lakewood had school-funding issues. They understood the problem, and they had to convince the governor and Legislature that Lakewood had a problem. The advances were not paid out of the goodness of their heart; it was because of Lakewood Township’s unique demographics.

Wyns has written papers for Lakewood relating to Lakewood’s unique demographics. He wrote in 2008 about the SFRA and pointed out problems with Lakewood’s demographics that continue. These problems pre-dated the SFRA and remain. The SFRA is not working in Lakewood, as is seen in the May 7 letter regarding the increased amount of aid. The situation is worsening, and worsening quickly, under the SFRA.

Lakewood Township’s demographics show a rapid population increase. The public school population is below 6% of total population; typically, it is about 16%. Lakewood has a large non-public school population. Forty-one percent (41%) of the township population is below the age of eighteen; on a statewide basis, it is 22%. Lakewood Township is double the average. Lakewood Township has had a large increase in property value and income, which, because it is disproportionate to the growth in the rest of the state, negatively impacts the public schools.

The largest calculation in State aid is equalization aid, which is based on property value and income. Lakewood's equalization aid is disappearing because of its increase in property value, and WYNS predicts that it will soon be zero. This is a consequence of recent amendments to the SFRA: adjustment aid and equalization aid will be gone, and only categorical aid of special education and security aid will be left.

In his opinion, more money is needed. Next year, \$43–45 million will be needed. Lakewood will need \$30 million just to sustain this year's level without any enrollment changes, or additional demand because of non-public school students requiring special-education services.

The only thing the State can offer is advances; it has no ability to provide grants. It is a non-sensical cycle leading to disaster because the amount to be paid back will become most of the aid Lakewood receives.

Funding will be reduced in the new statute. Lakewood now owes about \$40 million. Averaged over ten years, it is about \$4 million per year. It is in the budget now at about \$3 million per year. In a couple of years, \$70 million will be needed to be paid back.

The loans were made because the SFRA is not doing what it is supposed to be doing, providing adequate revenues for the district to provide a thorough and efficient education for its students. It is possible mathematically that if this process continues, all the State aid that is supposed to be used for providing children with a thorough and efficient education will be used to pay back the loans. The SFRA cannot provide revenues for a thorough and efficient education. The SFRA is supposed to provide funding for districts to provide a thorough and efficient education. It is a question of how long the State allows this process to continue.

State aid is not going to grow. Two things occurred after May 7, 2018, that negatively impacted State aid to Lakewood: first, the Appropriations Act language for the 2018–2019 school year reduced aid by \$1.5 million (which is why Lakewood received emergency aid); and second, adjustment aid was eliminated for school districts for 2018–

2019. Chapter 67 removed adjustment aid permanently, and there will be no more adjustment aid in the future. (The State-aid cap was also removed, but this would have no impact on Lakewood.)

Based on recent legislation, Lakewood's equalization aid will disappear next year or the year after and will not be offset by any State-aid advances. If the loan process continued for three years, Lakewood would owe \$140 million, and most of the State aid advanced would be money owed back to the State. The larger the property value and income, the lower the school aid from the State, relative to the public school population, and not to the total number of students in the district. The relative wealth per public school student because of the growth in population and the increase in property value and income causes Lakewood's local share in the school-aid equalization-aid formula to be too large, because the district appears to be disproportionately wealthy relative to the small public school population. The demographics attached to property value, income, and special-education enrollment all must be addressed. The formulas and their components must be tweaked by the Legislature to help Lakewood.

Lakewood Township cannot just raise taxes, because of the 2% tax-levy increase cap. Lakewood has been doing this, but it cannot have a referendum except for things not required for a thorough and efficient education, as the law does not permit Lakewood Township to do this.

Lakewood requires legislative action; there is nothing the DOE can do administratively except to provide the advances. The DOE is doing everything it can do.

Wyns understood that the SFRA was designed to meet the constitutional mandate to provide a thorough and efficient education. The previous act relied on discretionary action, which was ruled unconstitutional. Funding for a thorough and efficient education is the continuing obligation of the State. It should be predictable for appropriate budget planning; it should be formulaic and not discretionary. It is unconstitutional if State-aid advances are unpredictable and subjective and not continuing until a decision is made. The intention in Abbott was to have a unitary funding formula to enable all districts to provide a thorough and efficient education, and it is not happening in Lakewood.

Witnesses for Respondent:

Kevin Dehmer has been with the DOE since 2007 and is the assistant commissioner of the Department of Education, assigned to the Division of Finance. As assistant commissioner, he has broad responsibilities, overseeing school facilities, grants, management, state monitors, and non-public and choice schools. He is acting commissioner in the event the commissioner is absent.

Since 2008, Dehmer has worked with the SFRA, a formula passed by the Legislature for school funding. The law considers enrollment as the main input to the formula. This feeds into the adequacy budget for the State and local districts, as well as into the categorical funding available for specific items. The state has 577 school districts. The adequacy budget does not count non-public school students.

The adequacy budget is calculated based on enrollment, with different factors weighing in costs for ESL students, needy students, speech-only services, and special-education services multiplied by a base amount. The local component is the local fair share: it equalizes property value and income and applies a rate which determines the dollar amount each district can pay to support the local schools. The State component is the equalization aid, which is the State's contribution to school funding. Two-thirds of special education is equalization aid, and one-third is for categorical funding, plus transportation aid and security aid (which is based on the number of students and the number of at-risk children).

On March 15, 2018, the Governor's budget message was sent out to all school districts providing a detailed outline of the calculation for the district following the funding formula and how the proposed aid was calculated. Lakewood received that notice. On July 13, 2018, notice was provided to the district to show the changes to the proposed funding amount after the Appropriations Act was modified. The adequacy budget was calculated on enrollment in public schools, and transportation for non-public school students was counted as required by the SFRA. The adequacy-budget calculation considered lack of English proficiency and low-income students (who receive free or

reduced lunch) in its weighted formula. Some districts spend over or under their adequacy budgets.

The local fair share takes into account property valuation and district income. The data comes from other State agencies like the Department of Community Affairs and the Department of Taxation. The local fair share is a calculation in the school-aid formula and considers the local tax levy. There are restrictions as to how much a district can raise. It is a 2% cap raise, but some exceptions were included in that law such as an allowance for increased enrollment and health-care costs. Districts can bank their cap. The levy cap can be exceeded, but districts must have ballot initiatives to increase the levy over the cap.

There are two types of State aid: equalization and categorical. Transportation categorical aid includes regular-education students and special-education students who do not require special services for transportation as one category. For special-education students who require an aide, a higher level of categorical funding is provided. The totals were \$11,144,460 for the first category and \$2,312,507 for the second.

Special-education categorical aid takes the district's total enrollment multiplied by 14.92% (statewide average classification), so using the \$17,343 per-pupil amount and adjusting that for the geographical cost, it is multiplied by one-third. Since two-thirds is already included as equalization aid, it is multiplied by one-third, for a total of \$5,007,392. The reason for the two-thirds, one-third split is to ensure that each district receives some aid for special-education costs. Security aid is calculated by the total number of students in the district, and also takes into account the concentration of low-income students in the district. Security aid and low-income aid totaled \$2,722,718.

Special-education extraordinary aid is outside these calculations; there is a formula for this. Extraordinary aid covers a portion of special education to cover both in-district and out-of-district placements, and is reimbursement based on the cost and the prior-year expenditure. Separate spending is included for non-enrolled students, but it is not included in the SFRA.

During the 2011–2012 grant year, the district received the most nonpublic school IDEA basic funding in the state. Lakewood received \$4 million, approximately 18% of total state non-public IDEA basic funding; the next district received \$700,000, a fifth of what Lakewood received. A recommendation had been made in 2014 for the district to determine whether other IDEA-approved programs or services could potentially benefit a greater population of non-public school students with disabilities and be a better use of the aid received.

The approximately 31,000 non-public school students in Lakewood Township make up approximately 25% of non-public school students in New Jersey. In 2017, Lakewood received 2.33% of total State aid, even though its share of total public school enrollment was less than 0.5%. Out of 577 school districts in New Jersey, Lakewood received a total of 21% of other non-public school aid. In 2017, the State provided approximately \$62 million in total aid for public and non-public school students to Lakewood Township.

Dehmer noted that Lakewood’s tax-levy history showed it was consistent, but only started to increase in 2015. In the early years, Lakewood was taxing a little above fair share, and was very close starting in 2014, but from 2014 to 2018 they were below local fair share. Lakewood’s school-tax rate for K–12 districts with 5,700 to 6,300 students compared to the statewide average showed that Lakewood was below the state average and was below other districts.

Lakewood has had a fiscal monitor since 2015. The monitor must remain with the district until the State-aid loan advances are repaid. Districts must meet benchmarks. Dehmer does not communicate frequently with the monitor. The monitor has authority to override the local BOE and adopt a budget with a tax increase, but it is limited to the 2% tax levy, with some exemptions.

Lakewood received State-aid advances in 2015–2016, 2016–2017, 2017–2018, and 2018–2019. Funding for Lakewood increased in 2018–2019. Loans were requested to balance the budget and to provide a thorough and efficient education, but he was not involved in that decision.

The commissioner is the authority who requests the supplemental-aid advances in funding: it is not determined by the formula or by the number of children in the district. He or she determines the amount based in part on the recommendations of his office. There are no negotiations. It is based on the recommendations of the monitor, office, and district. It is based on need, and a thorough and efficient education is the benchmark.

Some of the money received by the district is necessary for the paying back of old loans. The \$28 million loan would have to be repaid, so some of it had to be used to pay back the State. The Commissioner recommended aid advances, which are generally paid back over ten years. The advances take into consideration not just the budget deficit, but also the need to repay previous aid advances.

The problem is an unbalanced budget. Local revenues must be maximized. High past non-mandatory expenditures can cause an unbalanced budget. The state monitor has been in Lakewood for five years. Dehmer reviews the budget plan set by the monitor: the monitor has plans to move the district ahead, Dehmer approves expenditures and plans to lower expenditures. Lakewood needs to do a more strenuous job of planning.

The SFRA adequacy budget is the school-funding formula that estimates what is necessary for a thorough and efficient education. It has nothing to do with Sections 192 and 193 aid. The loans are not based on a formula, they are determined based on the budget submitted by the district and items indicated to the DOE by the monitor. Dehmer does not know the exact expenditures, or tuition paid to schools outside the district. The loan is based on getting to a balanced budget and local control with the monitor, who reports to Glenn Forney.

Dehmer did not recall the months the advance aid loans were made to the district. Most districts start budget planning well in advance, as it is a statutory process. The districts are notified of the Governor's budget proposal, but do not know what it entails until the budget is signed. Lakewood needed more money in its adequacy share and has received the largest State advance. Ultimately, they are all trying to get to a balanced

budget, and, with State-aid advances, the district can provide a thorough and efficient education.

Dehmer had no day-to-day knowledge of the district. He just looks at expenses and revenue. The SFRA is funded every year according to the annual Appropriations Act but is not as fully funded as it could be.

Christopher Soleau testified that he has been employed by the Office of Legislative Services as a principal auditor since 2001. He is a field supervisor and assists in conducting investigations. He has a Bachelor of Arts degree in accounting.

As a trained auditor, he audits state agencies and programs with the goals of improving accountability, efficiency and the effectiveness of public spending. He has personally been involved with audits in Trenton, Asbury Park and Lakewood.

An audit is comprised of three phases: planning (meeting with personnel, reviewing records, reports and data); testing (reviewing documents and verifying processes and control; and reporting (compiling the audit, drafting a report, and obtaining approvals).

The site investigation in Lakewood commenced in January 2013 and ended in June 2014. The auditors found a general fund deficiency and the district was placed on an audit plan.

The audit report was issued in August 2014. It noted a few issues involving financial transactions that were not consistent with government auditing standards, a projected deficit, a lack of control environment leading to a lack of stability, and a growing population with flat property taxes which affected the budget and created a deficit. The report made recommendations for long-term goals.

The review noted that state and federal grant programs under Title I that were provided to low income students, showed that reconciliation procedures were lax. Title I

waivers lacked supporting documentation. The board had approved contracts without review, and other expenses were questionable.

Programs (under Sections 192 and 193) provided for auxiliary services, compensatory education, ESL and home instruction, and remedial and speech-language services. Lakewood received \$13.9 million in fiscal year 2012, and \$14.8 in fiscal year 2013. Other areas of concern in the report included: compensatory education, speech-language instruction, home instruction, school visits, legal costs, purchasing procedures, lease agreements, information technology, business continuity, special education tuition, payroll and personnel, criminal history background checks, final leave balance payments, salary allocations, employee contracts and salary increases, leaves of absence, observations, and the IDEA program.

After his report was issued, it went to the district and some of the identified problems were fixed.

Catherine Anthony is a dispute resolution specialist with the DOE. She opens mediation and due process files and is assigned special projects. Files are retained for twenty years and a data base is used to track cases from filing through outcomes.

Anthony researched agreements that Lakewood had reached on special education due process matters appealed to the OAL and found that 75 special education settlements had disenrolled those students from the district between 2013 and 2018.²⁷ The total cost to the district for these 75 students was \$10,176,771.²⁸

Raymond J. Zirilli, Jr., has been a senior transport specialist at the DOE for almost twenty years. His primary role is to gather data for paying state aid and regulating student transportation; he has other duties as well.

²⁷ One student was disenrolled in 2013; 26 in 2016; 37 in 2017; and 11 in 2018. Other years were not provided. This is not the total number of special education students in the district.

²⁸ These settlement agreements were reached between parents acting on behalf of their children and the district, approved by the monitor, and then submitted to an ALJ in accordance with N.J.S.A. 18A:46-14(h).

In 1999 an audit was performed in Lakewood to see how efficiently the district was transporting students and their particular transportation needs. For example, if the district was running separate male and female buses, they would be running buses with fewer students and thereby running more buses than necessary. More efficient districts staggered bell times, and he needed to know if Lakewood was coordinating these. These concerns were shared with the district.

Zirilli noted that Lakewood's non-public school students were receiving courtesy busing. Courtesy busing is busing provided at the discretion of the local board of education and at local taxpayers' expense; it was not paid by the state as the state just pays for mandated busing which is two miles for elementary students and 2.5 miles for high school students.

Zirilli referred to the District Report of Transported Students (DRTS) which is the data collection to process state aid for transportation. The data consists of mandated transported students with sub-categories of actually transported and aid in lieu (AIL) which is the payment provided to parents equal to a maximum statutory amount that changes with each budget year to arrange for their own transportation. Aid is paid to the parents in lieu of the district providing transportation. The amount was \$1,000.

After 2015-16, New Jersey established the Lakewood School Transportation Authority (LSTA) with aid in lieu. The district paid the AIL to the LSTA to provide mandated transportation services for non-public students. By comparison, in 2009-2010, the district transported 8,914 students and provided AIL for 156; by 2016-2017, the number went to 8 transported students and 15,919 transported by the LSTA.

Robert Ortley testified that he was employed as a manager of the New Jersey State Aid Audit Unit for nineteen years until he retired after 38 years with the State. The unit reviews and evaluates a school district's compliance with the requirements of the State division of finance to ensure that school aid is properly calculated by comparing the district's data to that on file with the state. The standard methodology is to compare lists of data submitted with accounting records, purchase orders, and other documents to see if the district's calculations were accurate.

An audit was conducted in Lakewood at the request of various government officials, and the final report was submitted on May 19, 2014. The audit used information as of October 14, as the statute required the last enrollment data on or before October 15 of that audit year. The purpose of the audit was to determine the accuracy of the data based upon enrollment records and accounting records of the school district for State aid reporting purposes.

The Application for State School Aid (ASSA) is an annual report filed by every district in the state to report the number of students enrolled. Deficiencies in the audit impact the amount of state aid a district receives or has to refund to the state. The linchpin for all reporting is the official New Jersey school register which is a contemporaneous and continuous document which indicates daily attendance and absence for the school year. The official New Jersey school register reflects daily attendance for the entire school year as compiled by the Office of Fiscal Accountability and Compliance (OFAC). If there is a difference, it can impact State aid. The audit showed that Lakewood had a disparity in student enrollment of about 84 students.

Within the resident enrollment count, the number of students who have limited English proficiency and those who are eligible for free or reduced meals is significant because the base aid factor of the funding formula provides extra aid for these at-risk students. In various subset categories that can provide for additional funding and impact funding, the results were also disparate. The number of students eligible for free or reduced meals showed a disparity of 207; for Limited English Proficiency a disparity of 96 students; and for transported students in regular and special education a disparity of 326.5. These audit exceptions were reported in September 2013 and the State worked with the district to reduce them. Ultimately some adjustments were made.

These students represented approximately \$2,308,500 that the district could have lost had the district been fully funded under SFRA. Recommendations were made to the district to ensure that future state aid would be calculated accurately. With such a high volume of data, they met with the district to review a draft so that the district could see the volume and magnitude of the findings.

Generally, the district's time to respond to the OFAC report is 75 days. The district can accept the report, appeal the report, or appeal specific findings in the report. Lakewood formulated a corrective action plan (CAP) to ensure the accuracy of its reporting which was submitted to the agency and shared with others in the DOE in finance and field services. Lakewood was advised by letter that its CAP was approved by the state. Follow-up meetings with the administrators were held and some adjustments were made. The final State aid recovery was reduced to about two million dollars.

According to the fiscal year report ending in 2018, \$2,305,605 was owed to the state due to this audit if the district had been fully funded under SFRA but it had not been. Ultimately, for that budget cycle, it was recommended that the district reimburse the state for one-fifth of that total amount to be recovered by the DOE. However, Lakewood still owed the State \$17,198,843 in outstanding loans as of 2018.

Accepting the DOE's numbers as correct as far back as 2011, Lakewood Township then had 5,248 students in the public school system and was transporting 13,676 students, more than 50% of the student population.

Glenn Forney is the deputy assistant commissioner of finance for the DOE. He has significant experience in budgeting and financing for school districts of the state. He is the Commissioner's designee for recruiting and placement of state monitors. He follows the statute that permits the appointment of monitors and which defines their authority in a district. Forney reports to Dehmer.

The DOE reviews the CAFR's of each district, analyzes them and reviews the qualifying elements for placement of a monitor. The DOE identifies districts that have qualifying elements that could result in the placement of a monitor. If a district just has one or two elements, the solution is remediation or a budget manager. If a district cannot remediate, then a monitor is placed. If it is in a deficit and can pay its bills, it gets help. If a district is in a deficit and cannot pay its bills, then a monitor is placed. A monitor is someone with a fiscal or superintendent's background. The DOE has found that having

a monitor in place generally provides a better rate of success for those districts with issues.

Lakewood has had a monitor since 2014 after a district audit was conducted in 2011. At that time, Lakewood's deficit was approximately \$6.4-6.5 million. Currently, eleven districts have monitors, but not all receive state aid advances. The goal is to help fix the district and then to exit. The monitor remains in place until the situation is remediated which is determined when it has a stable administration, the CAFR findings are cleaned up and the loans (advance state aid) have been paid back. Monitors are paid by the district.

Forney does all the recruiting and day-to-day operations involving the monitors with whom he communicates as often as needed. He oversees them, prepares their contracts, oversees hiring, etc. Lakewood presently has one monitor, but at one point there were three. Monitors have helped. The deficit balance is going down and the number of CAFR findings is getting better. But it will be a long hard road to fix past damage.

The growth in the number of non-public school students far out paces the number of public school students which is not seen in any other district. It is also a by-product of zoning, and the town council appoints the zoning board. The district is responsible for transportation of non-public school students, Child Find and IEP teams. State aid provides Sections 192 and 193 funding and federal aid helps with the IDEA funding.

The financial stressors on the Lakewood public school district are for transportation for non-public school students and special education.

Transportation is mandated for 21,000 non-public school students, and the DOE cannot limit the number. Students in grades K-12 who live beyond a two-mile limit and students in grades 9-12 who live beyond 2.5 miles get bused. The district cannot choose which school the non-public school students attend and must pay mandatory transportation costs. The cost for this runs about \$20-22 million per year.

Lakewood gets transportation aid for mandatory busing; the formula sets the amount. It comes from State appropriations funded by taxpayer revenue.

The cost of special education is another stressor in the district. These students are registered with the public school district and as public school students, they get IEP services. These students are counted in State aid. Extraordinary aid is paid for special education students with out-of-district placements where costs exceed the threshold. The State pot is divided up and Lakewood receives this aid as well.

Lakewood Township has been growing. He reads the CAFR and statistics show its population growth. The district gets it from the DCA. Lakewood Township has new construction; its ratable balance is growing. School taxes go to the township, and first year tax payments stay with the township. The school levy is set by the school board. The township does not have to go above the levy to give money toward education. Ratables are the assessed value of property and are recorded in the county schedule of ratables and in CAFR.

Forney looks for trends and analyses. The tax rates in Lakewood Township have been decreasing; as the ratables go up, the tax rate goes down.

The SFRA determines local fair share by considering town wealth and property values. The DCA provides the data about income, wealth and property value. The district contributes to the local fair share; it is what the township can pay toward school funding. The district is not required to tax up to the local fair share but it can do it. Lakewood is not raising enough for its local fair share. The levy struck by school board is less than total fair share. The tax cap restricts it to 2% and Lakewood capped out at 2%.

Forney looked at Ocean County. Lakewood is in middle of the pack of tax rates. The tax rate is the by-product of tax levy. The tax levy in Lakewood had been stagnant, then it decreased, and it is now increasing. Lakewood Township's population is growing, not stagnating.

In 2015, the levy went up 9.2%. The monitor struck the tax levy that year and they raised taxes to the maximum amount. That tax levy increase in 2015 did not fix the problem because they had a deficit from previous years and costs were rising. The tax levy cap can be overcome to cover increased cost of medical insurance; enrollment; pension and government duties to another entity.

N.J.S.A. 18A:22-40 provides that a district such as Lakewood can raise funds for the general fund deficit and is not limited to the cost of a thorough and efficient education. Other districts have used this statute to raise more revenue. Lakewood Township put out a referendum, but it did not pass. The monitor cannot direct the township to raise taxes.

Voter approval could bring in more funds for the district to cover non-T&E items. Funding comes from the tax levy, federal aid and state aid. State aid comes through the Appropriations Act. Lakewood was frozen in the past and was getting the same amount as prior years. The Appropriations Act did the freezing and it could cause an issue, but school districts can plan for that. The State aid process starts in November and December and is based on what the district is receiving. The governor's budget is prepared in February and March and state aid letters go out March 20 when the budget is due. Once the Appropriations Act is passed, the districts get the aid.

School districts must have a balanced budget; revenue must equal expenses. In some years, Lakewood's budget was balanced with a state aid advance which is a loan. This is all part of the school funding scheme; other statutes permit districts to raise funds. The DOE does not have the funds itself; it must request them from the state treasurer. They want to make sure a district gets the right amount of aid. Forney works with the monitor, county offices, etc., to calculate the true cost for expenses and to compare those costs to the district's costs. Streams of revenue are ascertained and if there is a gap, an advance of state aid is provided. They rely on the school superintendent for educational experience. They look at any costs or efficiencies. The district provides the data and the state looks at aid.

State aid advances are not determined by formula but rather they are given at the discretion of the Commissioner and the Treasurer. The State works with the district to

determine need. The State needs correct numbers before it can determine amount of aid for the district. The funding formula recognizes the number of public school students. State aid advances started in 2015 and filled the gap between spending and what the district had available to spend. Once the state is confident that the amount requested is correct, the Commissioner requests funds from the state Treasurer.

On June 15, 2015, the treasurer approved \$4.5 million requested by Hesper for Lakewood; on June 23, 2016, \$5,640,183 requested by Hesper; on November 9, 2017, requested by Harrington, \$8,522,678. That year they had problems getting data from Lakewood, so the State recreated what the dollar amount would be. On May 7, 2018, Forney advised Winters that Lakewood would receive \$28,182,090 for that fiscal year. But Lakewood had some banked cap rate it could have used to avoid some of these advances. In 2016-17 there was still a shortfall, and the budget was as low as possible. In 2017-18, State aid was \$8.5 million, and the budget was balanced with the loan. The advance State loan was paid on May 17, 2018. Any loan can only be for ten years; he has not seen that loans can be forgiven.

The deficit is the amount that the district is short after it pays its bills, including the loan payback. At the end of the year, the short fall is the deficit. Lakewood's annual deficit is dropping but aid to it is increasing. Some payments have been made to the outstanding balance. Lakewood has a general fund deficit of \$3.8 million down from \$12 million that would free up money in the budget. Lakewood must repay these state advances starting the following year. No interest is paid, and the advance is deducted from aid in future years. Lakewood could ask Lakewood Township for more money.

Reductions in force are something to be avoided. But revenues must equal expenditures. The district could go out in November to ask voters for extra aid; the district could reduce expenditures or raise funds if there is a deficit. He works with Shafter on the budget. Forney was not aware if Azzara said that Lakewood has a revenue problem, not a spending problem. But the budget must be balanced either with advances on state aid, or by reductions ordered by the monitor to get to the balanced budget.

Forney consulted with Shafter about the 2018-19 budget as adequate to meet the district's needs. The tax levy increased. SFRA and State aid were locked in and Lakewood needed another advance. The State must help Lakewood achieve a balanced budget every year.

The monitor can override the board as long as there is a fiscal nexus. If the board does not take action, the monitor can strike the tax levy. Taxes can be raised by the 2% tax cap.

State aid is not provided for non-thorough and efficient education items. In 2016, the state monitor ordered the school board to put to a voter referendum a tax increase for courtesy busing, a non-T&E item; however, the Lakewood Township voters defeated the proposal for payment of courtesy busing by approximately 7,000 to 100.

Seventy-three to eighty percent of the budget is salaries. Forty million dollars is for tuition. Lakewood has significant out-of-district special education costs which put a strain on the budget. Transportation costs are a major contributor to cost increases at \$710 per child. The 2014 monitors noted that the cost for transportation and out-of-district special education expenses were going up and trending higher.

The SFRA was developed for school funding and was approved by the New Jersey Supreme Court. A state monitor is required to get a State aid advance. Lakewood still meets the qualifications for the presence of the monitor due to deficit, internal control issues, federal funds refund, and CAFR findings. The monitor stays in the district at the discretion of the commissioner until the condition has been remediated. Lakewood has \$46 million outstanding.

The annual budget process needs to address economies and efficiencies. Lakewood's CAFR in June showed a \$3.1 million deficit due to operations, \$11 million in total, due to late State benefits as June payments were late. The district is made whole in June or July as State aid is paid out two times per month. The SFRA is not fully funded. The year by year approach is working. The plan with CAFR is to have the monitors fix the district and get out.

FINDINGS²⁹

Much of this case is about numbers and statistics: the SFRA funding formula, Lakewood's revenues and expenditures, demographics, test scores, course offerings, graduation rates, and more. Many of these numbers and statistics are a matter of public record, are not in dispute, and have been explained and contextualized by witness testimony.

For "testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself." In re Estate of Perrone, 5 N.J. 514, 522 (1950). A credibility determination requires an overall assessment of the witness's story "in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952)(citation omitted).

Upon consideration of the public documents, exhibits, and witness testimony relevant to this matter, I **FIND** the following as fact:

In 2000, Lakewood Township had a total population of about 60,000 people. In 2019, the estimated population was roughly 106,000, which represents a seventy-six percent population increase over nearly two decades. This rapid population growth is largely attributed to the burgeoning Orthodox community in Lakewood Township.

A large percentage of Lakewood Township is composed of persons under the age of eighteen, or school-age children. Among the school-age children in Lakewood Township, there is a stark dichotomy between attendance at public schools and

²⁹ The facts have been gleaned from the rather disjointed testimony, the evidence presented by the parties, and certain publicly available information and data from DOE's website. Unfortunately, the parties could not jointly stipulate to facts.

attendance at private or sectarian schools. For the 2008-2009 school year, approximately 4,900 students attended the public schools, while 14,460 attended non-public schools, which meant that about twenty-five percent of the school-age population was then in public school. However, as of 2019, the public school population increased to about 6,000 students, while the private school population had grown to more than 30,000 students.

This means that, currently, only sixteen percent of Lakewood Township's students attend public school while eighty-four percent attend private or sectarian schools. This statistic is so deviant from the average in New Jersey as to be an outlier. The non-public school students in Lakewood Township make up approximately 25% of all non-public school students in New Jersey, and the private school population will continue to outpace the public school population at a geometric rate.

The petitioners' witnesses testified credibly about the effect the rapid growth in private school attendance has had on the district's finances. In particular, Finger, Shafter, and Azzara credibly described Lakewood's on-going budgetary issues arising from the costs borne by the district in accordance with State law for the transportation and special education of students attending private schools.

Finger credibly testified and I accept as fact that when he first left Lakewood's employ in 2010, the district had a budget surplus. Since his return in 2017, the district has needed significant financial help from both the State and the Township to balance its budget. The district's financial issues can be attributed in large part to the extraordinary cost the district bears for its legal mandate to pay for transportation for private school students and for tuition for special education students the district places in out-of-district private schools. For instance, for the 2017-2018 school year, these transportation and special education costs consumed more than half of the district's budget, or \$78M out of a total budget of \$144M. However, in neighboring districts such as Toms River, Brick, Jackson, and Freehold, the average transportation and special education tuition costs make up only 4-7% of their budgets.

Because Lakewood started going into a deficit in 2014, a State monitor was appointed to the district to supervise financial operations and to ensure accountability for

the expenditure of public funds. In 2013-2014, the deficit was approximately \$6 million. For 2016-2017, it was approximately \$4.3 million.

Shafter and Azzara, the State monitors, echoed Finger's sentiments about the correlation between Lakewood's private school expenses and its budget problems. Since their placement in Lakewood in 2014, these monitors have rectified several issues with recordkeeping and financial waste in the district. To avoid teacher layoffs, increased class sizes, and program cuts, and to balance the annual budget, the district has borrowed millions of dollars from the State in the form of advance SFRA aid.

Lakewood received \$4.5M in advance aid in 2015; \$5.6M in 2016; \$8.5M in 2017; and, \$28M in 2018, for a total of nearly \$50M. As noted by several of the witnesses for both parties, advance aid is essentially a loan from the State with money from future SFRA aid. Lakewood must repay these loans out of future aid, creating an unsustainable cycle of borrowing and repayment that will be difficult for Lakewood to break. Only districts with State monitors are eligible for advance aid, and State monitors cannot be removed unless and until a district repays the advance aid it receives.

With Lakewood's budget issues as a backdrop, Winters, Spitz-Stein, and Marshall provided valuable insight into the characteristics of Lakewood's student body, teachers, and programs, and credibly described Lakewood's efforts to deliver T&E to public school students.

The socioeconomic makeup of the district's public school students is 94% Latinx and Black; 100% percent of the student body is eligible for free or reduced-price lunch based on household income. Lakewood also has a high percentage of ESL and LEP students.

The district's course offerings meet the State's requirements for graduation, with twenty English classes, and fifteen classes each in Math, Science, and Social Studies. The district also has AP classes in English and Spanish, and several classes in music, art, and computers. However, over the years the district has cut programs for industrial arts and auto mechanics, and the only foreign language study offered in-district is

Spanish. Also, the district has a special education preschool program for three- and four-year-old students, but only offers general education preschool for four-year-old students.

Winters, Spitz-Stein, and Marshall also credibly discussed relevant characteristics of Lakewood's teachers. Teacher turnover is significant in Lakewood, where the average teacher salary is below the State average. The average teacher in Lakewood has between only four and five years of experience, and Lakewood must spend significant money on teacher development and training. Marshall and Spitz-Stein bemoaned the lack of remediation/intervention specialists in the district who can provide students the extra educational support they require in their areas of struggle or deficiency.

Lakewood lags well behind other districts in terms of per pupil classroom instruction spending and classroom salaries. For example, according to the DOE's Taxpayers' Guide to Spending 2018, Lakewood spent \$7,427 per pupil on classroom instruction for 2016-2017, which ranked as the second lowest amount among the ninety-eight K-12 school districts with more than 3,500 pupils.³⁰ And, for the same school year, Lakewood spent \$6,906 per pupil on classroom salaries, which also ranked as the second lowest among comparably-sized school districts.

Winters and Spitz-Stein also testified about how standardized test scores and other educational benchmarks are improving but are still well below State averages, and their testimony is supported by publicly available information compiled and disseminated by the Department of Education.³¹

For the 2014-2015 school year, only twenty-three percent of high school students met or exceeded expectations on the PARCC assessment for English, placing them in the twenty-third percentile in the State, while only five percent of high school students met or exceeded expectations on the PARCC assessment for Math. On the New Jersey Biology Competency Test (NJBCT), only thirty-two percent of high school students were proficient, while sixty-eight percent were partially proficient.

³⁰ Taxpayers' Guide to Education Spending 2018, available at <https://www.nj.gov/education/guide/2018/>.

³¹ This information is available at [New Jersey School Performance Reports, https://rc.doe.state.nj.us/SearchForSchool.aspx](https://rc.doe.state.nj.us/SearchForSchool.aspx).

On the SAT, only six percent of students scored above the benchmark of 1550, placing Lakewood High School in the thirteenth percentile in the State and well below the Statewide target of forty percent. Moreover, only twelve percent of Lakewood high school students were enrolled in at least one AP/IB course, well below the State average of thirty-six percent. And a mere twelve percent of students scored a three on an AP test or a four on an IB test, while the State average was seventy-two percent.

Finally, for 2014-2015, the graduation rate was seventy-four percent, or the sixth percentile in the State, where the Statewide target was seventy-eight percent; the dropout rate was nearly four percent, or double the Statewide target of two percent; and, only forty-four percent of students were enrolled in either a two- or four-year postsecondary school, compared with seventy-eight percent across the State.

For the 2015-2016 school year, twenty-three percent of high school students met or exceeded expectations on English assessments, or the twenty-third percentile in the State, while seven percent of high school students met or exceeded expectations on Math assessments, or the thirteenth percentile in the State. And on the Biology assessment, only twenty-two percent were proficient, compared with a forty-one percent State average.

On the SAT, twenty-three percent met the College Readiness Benchmarks on the reading and writing portion, compared with seventy-one percent Statewide, and on the math section, eleven percent met the benchmarks, compared with fifty-three percent Statewide. And only fourteen percent of students were enrolled in at least one AB or IB course, compared with thirty-nine percent across the State.

Finally, the graduation rate was seventy-five percent, or the ninth percentile in the State, where the Statewide target was eighty-one percent; the dropout rate was nearly three percent, while the Statewide target was one percent; and, only thirty-seven percent of students were enrolled in either a two- or four-year postsecondary school, compared with seventy-seven percent across the State.

In 2016-2017, only twenty-five percent of students met or exceeded expectations on state English assessments, and only eighteen percent met or exceeded expectations on state Math assessments. Lakewood also suffered from chronic absenteeism, with thirteen percent of students absent for ten percent or more of days enrolled. Finally, for 2016-2017, the four-year graduation was seventy-five percent in Lakewood, while the State average was ninety percent, and the rate of college enrollment (two- and four-year programs) in Lakewood was forty-four percent, while the State average was seventy-six percent.

In 2017-2018, some of the metrics improved slightly: twenty-eight percent of students met or exceeded expectations on state English assessments, and twenty percent met or exceeded expectations on state Math assessments. Chronic absenteeism increased slightly over the previous year, with a rate of sixteen percent. The district's graduation and college enrollment rates still fell below the State average (eighty-two percent versus ninety percent) and (forty-one percent versus seventy-eight percent). Finally, the district's AP and dual enrollment (college courses taken by high school students) rates were also well below State averages (seventeen percent AP enrollment versus a State average of thirty-five percent and zero percent dual enrollment versus a thirteen percent State average).

In 2018-2019, some of the metrics continued to improve, but they still fell well short of State averages. Thirty-three percent of students met or exceeded expectations on state English assessments, and twenty-one percent met or exceeded expectations on state Math assessments. Chronic absenteeism decreased from the previous year, with a rate of nine percent, which was below the State average of eleven percent. The district's graduation and college enrollment rates continued to fall below the State average (eighty-one percent versus ninety percent) and (forty percent versus seventy-eight percent). Finally, the district's AP and dual enrollment rates were also well below State averages (twenty-one percent AP enrollment versus a State average of thirty-five percent and zero percent dual enrollment versus a nineteen percent State average).³²

³² The DOE website provides a statistical analysis of all school districts in the state if comparison is necessary.

Another measure of whether a school district is providing its students with T&E, the NJQSAC, also provides evidence of the education situation in Lakewood. The NJQSAC measures a district's effectiveness in five performance areas, including instruction and program, fiscal management, governance, operations, and personnel, with a score of less than eighty-percent in any category necessitating improvement activities.³³ For example, for the 2016-2017 school year, Lakewood scored at fifty-four percent in instruction and program, which measures such things as student performance and progress on state assessments, graduation rates, and alignment of curriculum to state standards.

Several witnesses discussed the SFRA in general and as applied to Lakewood. The SFRA formula bases the calculation for state aid on the number of students in the public school system and not the total number of students or school-age children residing within the district. The core of the SFRA is the adequacy budget, which is a State calculation of the amount of money a district needs to provide its students with T&E.

A school district contributes to school funding through the local fair share, which is determined by equalizing property value and income in a district and calculating the dollar amount each district can pay to support the local schools. The State component is the equalization aid, which is the State's contribution to school funding.

The funding formula includes transportation aid and special education aid. The transportation and special education aid that Lakewood receives under the SFRA does not cover its actual transportation and special education costs. Dr. Farrie credibly noted that Lakewood spent about \$40 million more than a district its size should spend due to special education and transportation costs.

The following table provides the relevant SFRA numbers for Lakewood for school years 2014-2015 through 2018-2019, rounded to the nearest million:

³³ See NJQSAC User Manual, available at <https://www.nj.gov/education/qsac/manual/>.

Year	Adequacy Budget	Local Fair Share	General Fund School Levy	Equalization Aid	Transpo. Aid	Spec. Ed. Categorical Aid
2014-2015	\$109	\$85	\$85	\$13 (fully funded); \$15 (actually appropriated)	\$9 (fully funded); \$4 (actually appropriated)	\$4 (fully funded); \$3 (actually appropriated)
2015-2016	\$119	\$97	\$90	\$12 (fully funded); \$15 (actually appropriated)	\$10 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2016-2017	\$119	\$93	\$94	\$10 (fully funded); \$15 (actually appropriated)	\$12 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2017-2018	\$110	\$102	\$97	\$8 (fully funded); \$15 (actually appropriated)	\$13 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2018-2019	\$114	\$112	\$101	\$2 (fully funded); \$15 (actually appropriated)	\$13 (fully funded); \$3 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)

The Department of Education provided the following chart of Lakewood’s tax levy and local fair share history under the SFRA:

Fiscal Year	Previous Year Tax Levy	Local Fair Share	Difference	Levy as % of Local Fair Share
2011	\$71,593,625	\$64,019,995	\$7,573,630	112%
2012	\$71,593,625	\$64,019,995	\$7,573,630	112%
2013	\$70,238,004	\$65,400,388	\$4,837,616	107%
2014	\$70,630,210	\$71,198,357	-\$568,147	99%
2015	\$77,097,641	\$85,419,632	-\$8,321,991	90%
2016	\$84,693,837	\$96,735,200	-\$12,041,363	88%
2017	\$90,350,168	\$92,974,112	-2,623,944	97%
2018	\$94,088,028	\$102,034,106	-\$7,946,078	92%

Dehmer credibly noted that Lakewood's tax levy history showed it was consistent, but only started to increase in 2015. In the early years of the SFRA, Lakewood was taxing a little above fair share, but from 2014 to 2018 it was below local fair share. Lakewood's school tax rate for K–12 districts with 5,700 to 6,300 students compared to the statewide average showed that Lakewood was below the state average. In 2016, Lakewood put to a public vote a referendum to increase the school tax levy to raise more than \$6M to help pay for transportation costs; that measure was defeated by Lakewood Township voters by a margin of 99% to 1%.³⁴

As is clear from the record and testimony, the two major budgetary stressors for the Lakewood district are the cost of transportation and special education placements for children who attend private school.

The following table shows Lakewood's special education tuition expenditures for private school tuition for school years 2014-2015 through 2018-2019:

School Year	Number of Students	In State	Out of State	Total Tuition
2014-2015	207	21,056,687	65,240	21,122,137
2015-2016	260	25,083,549	125,476	25,209,025
2016-2017	299	27,891,730	281,215	28,172,945
2017-2018	296	29,305,180	593,975	29,899,155
2018-2019	343	33,232,478	72,900	33,305,378

Dr. Farrie credibly testified that the reasons for Lakewood's high special education costs are a large population of special education students, a large number of students whose disabilities carry high costs, and higher-than-average out-of-district placements, which are more expensive. She posited that fewer out-of-district special education placements could help reduce Lakewood's special education costs.

The following is a table of the district's transportation expenditures:

³⁴ Clearly the local voting populace has not demonstrated enthusiasm for an increased tax levy.

School Year	Public School Students	Private School Students	Aid in Lieu of Transp.	Total Transported(Non Spec Ed)	Total Cost
2014-2015	2,052	13,832	462	16,346	\$23,235,597
2015-2016	2,038	15,982	286	18,316	\$26,343,391
2016-2017	2,163	15,919	1,050	19,132	\$25,732,995
2017-2018	2,336	8	19,166	21,510	\$29,739,226
2018-2019	2,285	84	20,147	22,516	\$31,155,570

Although Lakewood has stopped directly paying for courtesy busing of children who live close enough to school such that they do not qualify for publicly-funded transportation, Lakewood's transportation costs continue to rise. Testimony indicated the need for more sidewalks, crossovers of Route 9, and crossing guards to reduce the number of hazardous walking routes in Lakewood.

In or about 2009, the Department of Education issued a "Lakewood Needs Assessment" in response to a State Board of Education directive arising from litigation first brought in the late 1990s by several then-rural and property-poor school districts, known as the Bacon districts and including Lakewood. See Bacon v. Dep't of Educ., 398 N.J. Super. 600 (App.Div.2008). In that case, the State Board ruled that several of the Bacon districts (not including Lakewood) were unable to provide T&E under the statutory funding scheme in place at the time. Bacon v. Dep't of Educ., 2006 N.J. AGEN LEXIS 108 (Jan. 4, 2006). However, due to a jurisdictional lack of "authority to direct that additional resources be provided to any school district in New Jersey," but acknowledging the need for some remedy, the State Board directed the Commissioner of Education to conduct a "needs assessment" for all of the Bacon districts, including Lakewood. Id. at *96.

The purpose of the needs assessments was to "assess[] the adequacy of the educational inputs and programming currently being provided" and to "identify the unique educational needs of the students in those districts requiring additional programs to address them." Id. at *103. According to the State Board, "an assessment of the educational needs and the identification of approaches that will successfully address those needs is a prerequisite to ensuring that adequate resources, including fiscal

resources, are provided and appropriate accountability for their use is guaranteed.” Id. at **97-98.

In the Lakewood Needs Assessment, the Department made several observations, conclusions, and recommendations. The Department noted a large percentage of Lakewood Township’s public school students were “at-risk (defined as being at or below 185% of the federal poverty guidelines),” and that “[a]lthough public school enrollment is stable, the nonpublic population increases by close to 1,000 students each year.”³⁵ The Department remarked that a large part of Lakewood’s budget was directed toward transportation and special education costs associated with private school students.

On the issue of transportation costs, the Department stated that “[t]he district is aware that the high cost of transportation, due to increased numbers of nonpublic students, staggered start times and its courtesy busing policy [under which the district opted to spend during the 2008-2009 school year \$4M on busing private school students who did not live remote from their schools], is a significant financial drain.” As for special education costs, the Department found that “[a]nother large budget expenditure is for out-of-district special education placements, which includes transportation for those students.”

The Department concluded that Lakewood, “while facing significant challenges, could do significantly more with the funds currently available to it” and “find ways to ensure that its resources are directed to meet the instructional needs of its students.” The Department recommended that Lakewood reconsider its courtesy busing policy and “continue to develop strategies to educate more of its special education students in-district.” The Department acknowledged that “[t]here are many areas which Lakewood needs to improve in terms of student performance,” including proficiency on English assessments, but stated that “the district also has significant resources to address those needs.” The Department recommended that one “successful strategy for improving student performance is to provide a high-quality preschool program as required by the SFRA.”

³⁵ An underestimate of the increase in non-public school students to be sure.

Lakewood was also the subject of a State audit that revealed issues with the district's spending on transportation and special education. As Soleau credibly testified at hearing, in 2014, the Office of the State Auditor issued a report on its audit of Lakewood for the period of July 1, 2011, to December 31, 2013. The purpose of the audit was "to determine whether financial transactions were related to the school district's programs, were reasonable, and were recorded properly in the accounting systems." The auditors found that "financial transactions . . . were not always reasonable or properly recorded in the accounting system" and that the district had a projected budget deficit of \$5M for FY 2014, and that "[i]ncreases in student transportation costs for public and nonpublic school students and special education tuition account for \$2.6 million of this projected deficit."

On transportation costs, the auditors noted that "[b]ecause of significant student population growth within the municipality, transportation costs had increased to \$19.6 million for the 2012-2013 school year," which included the cost of "provid[ing] non-mandated (courtesy) busing to public and nonpublic school students who would otherwise walk along the numerous hazardous routes identified in the township." The auditors suggested that "transportation costs of the district could be reduced with the implementation of certain initiatives," including the following:

- The majority of the nonpublic school bus routes in the district are segregated by gender. Since most of these schools have a 9:00 a.m. start time, the demand causes increased pricing by the vendors. Separately tiering the bell times for the girls and boys' nonpublic schools could save the district up to \$6.7 million. For example, starting school at 8:30 a.m. for girls and 9:15 a.m. for boys would enable the busing contractors to bid on tiered routes which would reduce the overall number of buses needed and create more competitive route pricing.
- Currently, there are separate buses for each nonpublic school. Savings of approximately \$750,000 could be achieved if routes were developed by school locations, not specific schools. This would result in shorter bus routes and fewer buses.

- Currently, nonpublic schools could have two starting times and as many as five ending times which creates inefficiencies and the need for one-way routes. Providing transportation to nonpublic schools based on a single opening and closing bell schedule for each school building could save the district up to \$1.2 million. This initiative has been presented to the board's transportation committee.
- [And] tiering the bus routes could reduce the savings of other proposed initiatives.

And in terms of special education costs, the auditors found a lack of "proper approval, tuition documentation, and attendance records . . . for students placed in unapproved nonpublic schools."

The auditors recommended that "the district, in coordination with state and local officials, develop long-term goals that will address the costs associated with the rapid growth in the district."

In response to the auditors' findings regarding special education costs, Lakewood indicated that "no additional students will be placed in private programs without the approval of the Commissioner of Education," and in reply to the findings on transportation costs, Lakewood stated that the district was "piloting a staggered nonpublic school schedule for 7 of the largest nonpublic schools during the 2014-2015 school year based on the premise that all nonpublic schools will go to a staggered school schedule in the 2015-2016 school year, which is expected to greatly reduce transportation costs." Yet special education and transportation costs have continued to increase.

In sum, based on the foregoing testimony, exhibits, and publicly available information and data, I **FIND** that Lakewood Township has experienced a population boom that has had a profound impact on the municipality's private and public schools. The overall population growth in Lakewood Township over the past twenty years has been accompanied by an almost proportional rise in attendance at the municipality's private schools. Many of the private school students, who now number more than 30,000, are, by law, entitled to transportation to and from school at public expense. In addition to the significant transportation costs associated with private school students, the Lakewood

Public School District also spends tens of millions of dollars in tuition each year to send a few hundred special education students to private schools. SFRA aid covers only a portion of these costs.

The school district's transportation and special education costs have strained its annual budgets and have led the school district down an unsustainable path of borrowing millions upon millions of dollars in the form of advance SFRA aid. The school district's financial difficulties have negatively affected its public school students, teachers, and programs. This is evident from a narrowed breadth of course offerings, relatively low per pupil classroom instruction spending and classroom teachers' salaries, and marked teacher turnover.

The 6,000+ public school students, nearly all of whom are Latinx and come from low-income homes where English is not the primary language, have fared poorly in terms of performance on English and Math assessments, graduation and dropout rates, and college enrollment.

In the past decade or so, the school district has been given recommendations by both the DOE and the State auditor for reigning in transportation and special education costs, and the Commissioner of Education has appointed a State monitor to oversee the school district's financial operations and to operate with a balanced budget. The continuation of State aid advances as an unreliable source of funding, and the obligation to reimburse the State over time, have contributed to the situation, as the school district's financial problems persist, and unrestrained growth continues in the Township.

LEGAL DISCUSSION

The petitioners make the following arguments:

Point I.

The SFRA is unconstitutional as applied to LPSD [Lakewood Public School District] because it does not assure sufficient funds for the district's public school students to achieve a constitutionally required T&E.

- A. LPSD's unique demographics make the SFRA formula an inapt and insufficient mechanism for assuring that LPSD has adequate funding for its public school students.
- B. Neither the SFRA funding formula nor the adequacy budget related to the SFRA formula contemplate a demographic situation such as Lakewood's and make adequate provision for LPSD's unique demographics.

Point II.

The addition of periodic uncertain, unpredictable and discretionary funding, whether in the form of so-called state advance aid, which is effectively a state loan to LPSD, or of a year-end addition to the state budget by a legislative footnote, cannot cure SFRA's constitutional defect inconsistent with a thorough and efficient system of public schools.

- A. To meet constitutional T&E requirements, funding must be formulaic, certain and not discretionary, predictable and transparent to adequately enable a school district to provide its public school students with T&E.
 - i) Funding must be pursuant to a discernable plan that correlated funding to T&E
 - ii) Funding must be guaranteed and not discretionary
 - iii) Funding must be predictable in order for a district to plan ahead and for the district to know how much it should spend on T&E
 - iv) Funding must be transparent so that the public and Legislature understand the needs of the district.
- B. To meet constitutional T&E requirements, funding must be adequate to enable LPSD to provide its public school students, many of them requiring

additional funding to address their at-risk status, with a meaningful opportunity to meet the NJ Student Learning Standards.

- i) The uncertain discretionary funding of LPSD is inadequate to serve the educational needs of Lakewood's disadvantaged students.
- ii) LPSD student outcomes fall far short of NJSL standards.

C. The statute under which advance state aid is provided was not intended to apply to a situation such as LPSD's annually recurring fiscal shortfall.

- i) The statutory advanced State aid provision and its substance suggest that advance State aid was an adjunct to the State monitors' role and a means to deal with short-term emergent circumstances brought on by fiscal mismanagement, not a mechanism for curing long-term structural problems with the SFRA funding formula.
- ii) The Commissioner's annual certification pursuant to the statute does prove, however, that LPSD's regular SFRA funding is insufficient to provide its students with a T&E education.

D. Because advance state aid is a loan that must be repaid out of future state aid, it exacerbates LPSD's fiscal situation and burdens it with increasingly great obligations.

- i) The Supreme Court of a sister state found that the state's use of loans to meet a district's ordinary operating expenses violated the though and efficient clause of its constitution.
- ii) This problem is compounded by the fact that, after 2018-2019, LPSD will receive as state aid only transportation and

categorical aids and not equalization aid, thus resulting in total state aid at best holding constant in future years, if not decreasing, and making repayment of LPSD's burgeoning debt to the state increasingly difficult.

- iii) Advance state aid for ordinary expenses violates the efficiency standard of T&E.
- iv) Advance state aid is available only to districts with state monitors in place.

Point III.

The presence in LPSD of as many as three monitors continuously since 2014 assures that the district is spending available funds appropriately.

Point IV.

Even if, arguendo, advance state aid and other forms of uncertain discretionary funding could be deemed to satisfy part of the state's obligation to assure that T&E is adequately funded, the facts in evidence demonstrate that LPSD still lacks adequate funding.

- A. Funding is inadequate to prepare students for their roles as citizen and competitors in the labor market.
- B. Funding is inadequate to serve the special educational needs of Lakewood students.

The respondents make the following arguments:

Point I.

The SFRA has been found to be constitutional.

Point II.

Petitioners have not shown that Lakewood is failing to provide them with a thorough and efficient education.

Point III.

The financial condition in Lakewood is the result of factors outside of the SFRA

- A. The district has a history of mismanaging funds and has made choices against the interest of the public school students.
- B. Local choices in the municipality contribute to the current financial conditions in Lakewood.
- C. There is legislation outside of the confines of the SFRA that has affected the district.

Participant Trachtenberg argues:

Point I.

The SFRA of 2008 fails to provide the Lakewood School District 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.

Point II.

Assuming it does not, then a constitutionally acceptable way in which the State can provide the LSD with sufficient supplemental non-SFRA funding must be determined.

Point III.

The state's arguments fail because that ignore or obfuscate the State's singular constitutional responsibility for assuring all state students, especially those who are at risk, receive a thorough and efficient education.

Participant Lakewood Township Board of Education argues:

Point I.

The Lakewood Township Board of Education public school district is not adequately funded, and the current state funding formula does not allow the Lakewood Township Board of Education to provide a thorough and efficient education to its public school students. A permanent statutory remedy is required.

Under the New Jersey Constitution, “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” N.J. Const. art. VIII, § 4, ¶ 1. Historically, the Legislature has sought to satisfy this constitutional mandate by passing various school funding statutes and by delegating certain powers and duties to the State Department of Education, the Commissioner of Education, the State Board of Education, and local school boards. Robinson v. Cahill, 69 N.J. 449, 458, 461 (1976); Bd. of Educ. v. City Council of Elizabeth, 55 N.J. 501, 505-6 (1970); Bd. of Educ. of Twp. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94 (1966).

Over the years, the Supreme Court has assessed the constitutionality of those legislative efforts through a series of opinions and orders known as the Abbott v. Burke litigation. The overarching theme of those judicial decisions is that “more severely disadvantaged pupils require more resources for their education” and that the legislative and executive branches must devise “a funding formula that . . . provide[s] all children, including disadvantaged children in poorer urban districts [commonly referred to as Abbott districts], with an equal educational opportunity as measured by the Constitution’s thorough and efficient clause” and “a set of educational program standards.” Abbott v. Burke, 199 N.J. 140, 144 (2009) (Abbott XX) (citing Abbott v. Burke, 119 N.J. 287, 374, 384-86 (1990) (Abbott II)); Abbott v. Burke, 136 N.J. 444 (1994) (Abbott III). According to the Court, “[a]t its core, a constitutionally adequate education [is] an education that will

prepare public school children for a meaningful role in society, one that will enable them to compete effectively in the economy and to contribute and to participate as citizens and members of their communities.” Abbott v. Burke, 149 N.J. 145, 166 (1997) (Abbott IV).

The State’s current funding framework to provide New Jersey’s public school children with a thorough and efficient education (T&E) is the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -70, which was originally enacted in 2008, P.L. 2007, c. 260 (eff. January 13, 2008), and most recently amended in 2018, P.L. 2018, c. 67 (eff. July 24, 2018). In the SFRA, the Legislature made several pronouncements about every public school pupil’s right to a constitutional education and the means by which that right may be realized. N.J.S.A. 18A:7F-44.

The SFRA recognized that “[t]he State, in addition to any constitutional mandates, has a moral obligation to ensure that New Jersey’s children, wherever they reside, are provided the skills and knowledge necessary to succeed” and that “[a]ny school funding formula should provide the resources in a manner that optimizes the likelihood that children will receive an education that will make them productive members of society.” N.J.S.A. 18A:7F-44(b). The SFRA also acknowledged that “[a]lthough the Supreme Court of New Jersey has held that prior school funding statutes did not establish a system of public education that was thorough and efficient” for Abbott districts, “the Court has consistently held that the Legislature has the responsibility to substantively define what constitutes a thorough and efficient system of education responsive to that constitutional requirement.” N.J.S.A. 18A:7F-44(c).

The SFRA defines its funding formula as “an equitable and predictable way to distribute State aid that addresses the deficiencies found in past formulas as identified by the Supreme Court” by “accounting for the individual characteristics of school districts and the realities of their surroundings, including the need for additional resources to address the increased disadvantages created by high concentrations of children at-risk” and “provid[ing] adequate funding that is realistically geared to the core curriculum content standards (CCCS), thus linking those standards to the actual funding needed to deliver that content.” N.J.S.A. 18A:7F-44(h) and (i).

The SFRA declared that “[e]very child in New Jersey must have an opportunity for an education based on academic standards that satisfy constitutional requirements regardless of where the child resides, and public funds allocated to this purpose must be expended to support schools that are thorough and efficient in delivering those educational standards.” N.J.S.A. 18A:7F-44(d). Thus, “school districts must be assured the financial support necessary to provide those constitutionally compelled educational standards” and “[a]ny school funding formula should provide State aid for every school district based on the characteristics of the student population and up-to-date measures of the individual district’s ability to pay.” Ibid.

The SFRA included a “formula an expanded high-quality preschool program for all children who qualify for free and reduced price meals in all districts” because “[i]t is appropriate for the formula to acknowledge that at-risk children do not always receive the same educational exposure at an early age as their peers and to provide the additional resources necessary through high-quality preschool to prepare every child to learn and succeed.” N.J.S.A. 18A:7F-44(k).

The SFRA directed the State Board of Education to “review and update the core curriculum content standards every five years . . . to ensure that all children are provided the educational opportunity needed to equip them for the role of citizen and labor market competitor,” and stressed that the SFRA needed to “work in conjunction with the key school accountability measures that have been enacted in recent years to promote greater oversight, transparency, and efficiency in the delivery of educational services,” including the New Jersey Quality Single Accountability Continuum, N.J.S.A. 18A:7A-10, and the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 to -60. N.J.S.A. 18A:7F-46; N.J.S.A. 18A:7F-44(o).

In Abbott XX, 199 N.J. 140, the Supreme Court held that, through the SFRA, “[t]he legislative and executive branches have enacted a funding formula that is designed to achieve [T&E] for every child, regardless of where he or she lives” because the “SFRA is designed to provide school districts in this state, including the Abbott school districts, with adequate resources to provide the necessary educational programs consistent with state standards.” Id. at 175, 147. In other words, the Court determined that “[t]he State [had]

constructed a fair and equitable means designed to fund the costs of [T&E], measured against delivery of the CCCS.”³⁶ Id. at 172.

In that case, the Court analyzed the various parts of the funding formula. As the Court explained, the “SFRA allocates state resources to school districts, while also requiring certain levels of funding at the local level” through a “weighted school funding formula.” Id. at 152. The formula starts with a “base per pupil amount,” which is “the cost per elementary pupil of delivering the core curriculum content standards and extracurricular and cocurricular activities necessary for [T&E].” Ibid; N.J.S.A. 18A:7F-45. The formula then accounts for increased education costs associated with higher grade levels, and impoverished, limited-English proficient, and special education students. Abbott, 199 N.J. at 152.

The SFRA funding formula includes an Adequacy Budget, which “is based on the community’s wealth and ability to provide funding through local resources;” equalization aid, which “is State-provided aid to support the Adequacy Budget by funding the difference between a district’s Local Fair Share (LFS) and its Adequacy Budget,” and, categorical aid, which covers certain special education costs. Id. at 153-155.

The Court explained that “[a] district’s LFS is the amount it is required to contribute in support of the Adequacy Budget” through taxes and “is determined by adding a district’s equalized property wealth and its equalized income wealth.” Id. at 155. A district is generally limited in its ability to raise taxes from year to year, N.J.S.A. 18A:7F-38, but “[a] school district may submit to the voters at the annual school election, or on such other date as is set by regulation of the commissioner, a proposal or proposals to increase the adjusted tax levy by more than the allowable amount,” N.J.S.A. 18A:7F-39(c).

And with respect to special education costs, “one-third of special education is funded on the basis of Categorical Aid, ‘regardless of the community’s wealth,’ while the other two-thirds of the special education funding is wealth equalized.” Id. at 156. In addition, the SFRA provides Extraordinary Aid by which “[t]he State reimburses ninety

³⁶ In a prior Abbott decision, the Court held that the CCCS were “a reasonable legislative definition of a constitutional thorough and efficient education.” Abbott v. Burke, 149 N.J. 145, 168 (1997) (Abbott IV).

percent of the costs over \$40,000” for in-district special education programs, while “the State reimburses the districts seventy-five percent of the costs exceeding \$55,000” for private, out-of-district special education placements. Id. at 157.

The SFRA also includes Transportation Aid for a district’s busing costs associated with public and nonpublic school children entitled to transportation services in accordance with N.J.S.A. 18A:39-1 (providing transportation for children who live remote from school) and N.J.S.A. 18A:46-23 (providing transportation for special education students). N.J.S.A. 18A:7F-57.

In sum, the Court has described the SFRA as “a weighted formula, of many parts and layers” that “was carefully constructed to account for the myriad needs and cost considerations relevant when devising a permanent formula to perennially provide school districts with predictable amounts of sufficient resources that should permit the provision of educational services sufficient to enable pupils of all types everywhere to master the CCCS.” Abbott XXI, 206 N.J. 332, 351-52. However, the Court has cautioned that the “SFRA will remain constitutional only if the State is firmly committed to ensuring that the formula provides those resources necessary for the delivery of State education standards across the State.” Abbott XX, 199 N.J. at 170.

The State standards by which T&E is measured are now known as the New Jersey Student Learning Standards (NJSLS), which are designed to prepare students for college, career, and life. N.J.S.A. 18A:7F-46; N.J.A.C. 6A:8-1.1 to -5.3. The NJSLS specify expectations in nine academic areas (English; math; arts; health and PE; science; world languages; technology; 21st century life and careers). N.J.A.C. 6A:8-1.1. School districts are required to “align their curriculum and instructional methodologies to assist all students in achieving the NJSLS and to prepare all students for college and career” and “[p]rogress toward meeting the NJSLS [is] measured by the Statewide assessment system at grades three through 12[.]” N.J.A.C. 6A:8-1.2(c) and (d).

The state regulations governing the NJSLS set forth requirements that districts must meet in terms of curriculum and instruction, the statewide assessment system, and graduation. N.J.A.C. 6A:8-3.1 to -5.3. First, school districts must “ensure that curriculum

and instruction are designed and delivered in such a way that all students are able to demonstrate the knowledge and skills specified by the NJSLS and shall ensure that appropriate instructional adaptations are designed and delivered for students with disabilities, for ELLs [English Language Learners], for students enrolled in alternative education programs, and for students who are gifted and talented.” N.J.A.C. 6A:8-3.1(a).

Second, school districts “shall, according to a schedule prescribed by the Commissioner, administer the applicable Statewide assessments, including the following major components: the elementary assessment component for grades three through five; the middle school assessment component for grades six through eight, [and] the high school end-of-course PARCC assessments.” N.J.A.C. 6A:8-4.1(c). These assessments test a student’s achievement or proficiency in the areas of English, math, and/or science. Ibid.

The Department of Education “shall review the performance of schools and school districts by using a percent of students performing at the proficient level as one measure of AMO [annual measurable objectives] and incorporating a progress criterion indicative of systemic reform,” N.J.A.C. 6A:8-4.4, and school districts “shall provide appropriate instruction to improve skills and knowledge for students performing below the established levels of student proficiency in any content area either on the Statewide or local assessments,” N.J.A.C. 6A:8-4.3(c).

Finally, “[f]or a State-endorsed diploma, district boards of education shall develop, adopt, and implement local graduation requirements that prepare students for success in post-secondary degree programs, careers, and civic life in the 21st century[.]” N.J.A.C. 6A:8-5.1(a).

The Department of Education also has “rules to implement the New Jersey Quality Single Accountability Continuum (NJQSAC) system, as required by N.J.S.A. 18A:7A-3 et seq., for evaluating and monitoring all school districts in the State.” N.J.A.C. 6A:30-1.1. Through NJQSAC, “school districts are evaluated in five key component areas of school district effectiveness -- instruction and program, personnel, fiscal management, operations, and governance -- to determine the extent to which school districts are

providing [T&E].” Ibid. Further, “[t]he standards and criteria by which school districts are evaluated will assess actual achievement, progress toward proficiency, local capacity to operate without State intervention, and the need for State support and assistance.” Ibid.

If a school district “satisfies at least 80 percent of the weighted quality performance indicators in each of the five key components of school district effectiveness,” the Commissioner shall designate the district as ‘high performing’ and the State Board, upon the Commissioner’s recommendation, may “certify, for a period of three years, the school district as providing a thorough and efficient education.” N.J.A.C. 6A:30-4.1. However, “[s]chool districts that satisfy less than 80 percent of the weighted quality performance indicators in one or more of the key components of school district effectiveness shall commence improvement activities[.]” N.J.A.C. 6A:30-5.2.

Another important component of the state education system’s T&E mandate are regulatory and statutory fiscal accountability, efficiency, and budgeting procedures for school districts. First, state rules “assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and [...] ensure [that] each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution’s mandate for a thorough and efficient system of free public schools for all children” and “ensure the efficient expenditure of budgeted funds in a manner consistent with a school district’s approved annual budget.” N.J.A.C. 6A:23-1.1.

In addition, and particularly relevant to this matter, is the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 to-59. Under that act, “the Commissioner of Education shall have the authority to appoint a State monitor and additional staff, as necessary, to provide direct oversight of a board of education’s business operations and personnel matters if: the school district receives an adverse or a disclaimer of opinion by its independent auditor in the annual audit required pursuant to N.J.S.18A:23-1” or other fiscal circumstances. N.J.S.A. 18A:7A-55(a). Once appointed, “[t]he State monitor shall provide oversight in the school district until the commissioner determines that all remedial actions required under the plan have been implemented and the necessary local capacity

and fiscal controls have been restored to school district operations.” N.J.S.A. 18A:7A-55(e).

Finally, the Act makes possible the receipt of financial loans for school districts with a State fiscal monitor. Specifically, “[t]he Commissioner of Education shall recommend to the State Treasurer whether an advance State aid payment should be made to a school district for which a State monitor has been appointed.” N.J.S.A. 18A:7A-56(a). The act states that “[t]he commissioner’s recommendation shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education.” Ibid.

If a school district receives such aid, “[t]he advance State aid payment shall be repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years” and “[t]he term of the repayment shall not exceed 10 years, but may be for a shorter term as determined by the State Treasurer.” N.J.S.A. 18A:7A-56(b).

While the Court has a lengthy history of assessing the constitutionality of various school funding statutes as applied to poor, urban school districts, the Court has yet to address whether a particular school funding statute, as applied to other school districts, has failed to provide T&E. Specifically, as the Court has noted: “[w]hile substandard educational conditions – perhaps of constitutional dimension – may exist in districts other than those that have been designated as Abbott districts, this Court has never stipulated any remedy, nor even found a constitutional violation, for children in non-Abbott districts.”³⁷ Abbott v. Burke, 206 N.J. 332, 371 (2011) (Abbott XXI).

This is precisely the issue raised by petitioners in this matter. They allege that the SFRA’s funding formula is unconstitutional as applied to Lakewood, a non-Abbott district, such that Lakewood does not receive sufficient funding under the SFRA to provide its public school students with T&E because the SFRA does not take into account the

³⁷ Abbott districts are now referred to as “SDA districts.”

extraordinary costs that Lakewood incurs to provide transportation and special education services to a large number of students attending private schools in the district.

The Court has instructed that “[w]hether a statute passes a constitutional challenge ‘as-applied’ to any individual school district at any particular time must be determined only in the factual context presented and in the light of circumstances as they appear.” Abbott XX, 199 N.J. at 235 (citing Robinson, 69 N.J. at 455). The Court has also cautioned that “[i]t is well recognized that legislative enactments enjoy a presumption of validity,” and that “[w]henver a challenge is raised to the constitutionality of a statute, there is a strong presumption that the statute is constitutional.” Ibid (citations omitted).

To prevail in this case, petitioners have the burden of showing that (1) Lakewood’s public school children are not receiving T&E and (2) the reason for the deprivation of their constitutional right to T&E is the SFRA. Specifically, whether the SFRA is unconstitutional as applied to Lakewood “turn[s] on proof that plaintiffs suffer educational inequities and these inequities derive, in significant part, from the funding provisions” of the SFRA. Abbott v. Burke (Abbott I), 100 N.J. 269, 296 (1985). As part of their proofs, petitioners must show that Lakewood “has done all it can do with statutorily available resources and improvement mechanisms, yet still cannot provide T&E because the statutory funding scheme generates insufficient monies for this purpose.” Bacon v. Dep’t of Educ., 2003 N.J. AGEN LEXIS 1195, *15 (Comm’r, Feb. 10, 2003).

Importantly, “the Court has repeatedly acknowledged and approved the administrative handling of educational controversies that arise in the context of constitutional and statutory litigation” because “ultimate constitutional issues are especially fact-sensitive and relate primarily to areas of educational specialization.” Id. at 300.

As such, this matter, which implicates fact-sensitive constitutional issues in the educational context, is appropriately before the Commissioner of Education, who transmitted the controversy between petitioners and respondents to the OAL for a hearing. The OAL has been tasked with “conduct[ing] a thorough hearing” for the “development of a complete and informed record, which will reflect determinations of

appropriate administrative issues as well as the resolution of factual matters material to the ultimate constitutional issues.” *Id.* at 303. And “in order to discharge this responsibility in a way that makes sense, the first-instance decision makers, the ALJ and the agency head, must fully address such constitutional issues raised as are necessary to the decision, and resolve them in principled fashion by their best lights, subject, of course, to judicial review. Jones v. Dep’t of Cmnty. Affairs, 395 N.J. Super. 632, 636-37 (App.Div.2007) (citing Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 14-42 (1962)).

I. Is Lakewood delivering T&E to its public school students?

In order to prevail on their claim that the SFRA is unconstitutional as applied to Lakewood because the SFRA provides insufficient funding for Lakewood to provide its students with T&E, petitioners must first show that Lakewood’s public school students are not receiving T&E. For the following reasons, I **CONCLUDE** that petitioners have met their burden of showing that Lakewood’s students are not receiving T&E.

As noted above, the State standards by which T&E is measured are the NJSLs, which are designed to prepare students for college, career, and life. School districts are required to “align their curriculum and instructional methodologies to assist all students in achieving the NJSLs and to prepare all students for college and career” and “[p]rogress toward meeting the NJSLs shall be measured by the Statewide assessment system at grades three through 12[.]” Thus, the NJSLs include requirements for curriculum and instruction, the statewide assessment system, and graduation.

Indeed, the Court has previously pronounced that whether a school district’s children are receiving T&E can be measured by such educational outputs as “their test scores, their dropout rate, [and] their attendance at college[.]” Abbott II, 119 N.J. at 391. Other indicia of T&E include educational inputs such as “teacher-student ratios and the education and experience level of the professional staff, as well as facilities to accommodate appropriate class sizes, science labs, media centers and libraries, and the availability of advanced placement courses and programs for gifted students, art and music programs and quality physical education programs.” Bacon v. Dep’t of Educ., 2006 N.J. AGEN LEXIS 108, *62.

By most of these measures, the education received by Lakewood's students is constitutionally inadequate and they are not being sufficiently prepared for college, career, and life. First, while Lakewood's curriculum aligns with the NJSLS requirements for graduation, and the district offers courses in AP English and Spanish, and several classes in music, art, and computers, the district has cut programs for industrial arts and auto mechanics, and the only foreign language study offered in-district is Spanish. Moreover, the district offers general education preschool to four-year-olds, but not three-year-olds.

While these deficiencies alone do not suggest that Lakewood's students are not getting T&E, there are other factors indicative of a lack of T&E. Chief among those proofs are standardized test scores in the district. While there was testimony at hearing of improving test scores, the data show that Lakewood's test scores are woeful when considered in isolation and when compared to other districts.

For the 2014-2015 school year, only twenty-three percent of high school students met or exceeded expectations on the PARCC assessment for English, placing them in the twenty-third percentile in the State, while only five percent of high school students met or exceeded expectations on the PARCC assessment for Math. On the Biology assessment, only thirty-two percent of high school students were proficient, while sixty-eight percent were partially proficient.

On the SAT, only six percent of students scored above the benchmark of 1550, placing Lakewood High School in the thirteenth percentile in the State and well below the Statewide target of forty percent. And a mere twelve percent of students scored a three on an AP test or a four on an IB test, while the State average was seventy-two percent.

For the 2015-2016 school year, twenty-three percent of high school students met or exceeded expectations on English assessments, or the twenty-third percentile in the State, while seven percent of high school students met or exceeded expectations on Math assessments, or the thirteenth percentile in the State. And on the Biology assessment,

only twenty-two percent were proficient, compared with a forty-one percent State average.

On the SAT, twenty-three percent met the College Readiness Benchmarks on the reading and writing portion, compared with seventy-one percent Statewide, and on the math section, eleven percent met the benchmarks, compared with fifty-three percent Statewide.

In 2016-2017, only twenty-five percent of students met or exceeded expectations on state English assessments, and only eighteen percent met or exceeded expectations on state Math assessments. This means that three-quarters or more of Lakewood's students did not meet expectations on English and Math assessments. And in 2017-2018, the scores improved only slightly: twenty-eight percent of students met or exceeded expectations on state English assessments, and twenty percent met or exceeded expectations on state Math assessments. Finally, in 2018-2019, some of the scores continued to improve, but still fell well below State averages. Thirty-three percent of students met or exceeded expectations on state English assessments, and only twenty-one percent met or exceeded expectations on state Math assessments.

Other T&E measurements are equally troubling. The district's chronic absenteeism rates were well above or close to the State average during the 2016-2017, 2017-2018, and 2018-2019 school years. In 2014-2015 and 2015-2016, the district's dropout rates were much higher than the Statewide targets for those years.

Lakewood's graduation rate improved somewhat from close to 75% in 2014-2015, 2015-2016, and 2016-2017 to 82% in 2017-2018 and 81% for 2018-2019, yet still fell well under the State average of about 90%. Lakewood also suffers from a low rate of college enrollment: 44% versus a State average of 78% in 2014-2015; 37% versus a State average of 77% in 2015-2016; 44% against a State average of 76% in 2016-2017; 41% versus 78% in 2017-2018; and, 40% versus 78% in 2018-2019. And the district's students fared no better in terms of AP enrollment, with rates of 17% and 21% in 2017-2018 and 2018-2019, for example, as opposed to State averages of 35% during those same years.

Finally, under another measurement of whether a school district is providing T&E – NJQSAC – for the 2016-2017 school year, Lakewood scored at 54% in the category of instruction and program, which measures such things as student performance and progress on state assessments, graduation rates, and alignment of curriculum to state standards, well below the benchmark of 80%.

Thus, when viewed alone or when compared with other districts, the educational output data show that Lakewood’s students are receiving an education that falls short of T&E.

In a district in which 100% of the student body is eligible for free or reduced price lunch based on household income and which has a high percentage of ESL and LEP students, Lakewood undoubtedly faces obstacles in its attempt to deliver T&E to its pupils. However, there is evidence to suggest that Lakewood is not providing certain educational inputs to help the district meet its constitutional obligation to its students.

In terms of teachers, teacher turnover is significant in Lakewood; the average teacher in Lakewood has between only four and five years of experience; Lakewood must spend significant money on teacher development and training. There is also a lack of remediation/intervention specialists in the district to give struggling students extra educational support.

Lakewood also struggles in terms of per pupil classroom instruction spending and classroom salaries. For example, Lakewood spent \$7,427 per pupil on classroom instruction for 2016-2017, which ranked as the second lowest amount among the ninety-eight school K-12 districts with more than 3,500 pupils. And, for the same school year, Lakewood spent \$6,906 per pupil on classroom salaries, which also ranked as the second lowest among comparably-sized school districts.

Finally, Lakewood lacks a comprehensive preschool program that includes general education preschool for three-year-old children, and instead only offers general education preschool for four-year-olds and special education preschool for three- and four-year-olds. However, as the DOE noted in its Lakewood Needs Assessment more than a

decade ago, a “successful strategy for improving student performance is to provide a high-quality preschool program as required by the SFRA.”

Based on the foregoing, I **CONCLUDE** petitioners have shown by a preponderance of the credible evidence that Lakewood’s students are not receiving a thorough and efficient education as required by the New Jersey Constitution. The statistics sadly indicate that Lakewood’s students are not prepared for college, career, or life due to a constitutionally inadequate education. In other words, petitioners have offered sufficient “proof that [Lakewood’s students] suffer educational inequities.”

II. Is the SFRA unconstitutional as applied to Lakewood?

However, to succeed on their claim that the reason Lakewood cannot provide T&E is the SFRA, such that the SFRA is unconstitutional as applied to Lakewood, petitioners must also prove that the educational “inequities derive, in significant part, from the funding provisions” of the SFRA. This is a heavy burden because “it is well recognized that legislative enactments enjoy a presumption of validity” and “[w]henver a challenge is raised to the constitutionality of a statute, there is a strong presumption that the statute is constitutional.” For the reasons that follow, I **CONCLUDE** that petitioners have failed to carry their burden.

Petitioners contend that the SFRA’s funding formula is unconstitutional as applied to Lakewood Township’s 6,000+ public school students, such that Lakewood does not receive sufficient funding under the SFRA to provide its public school students with T&E because the SFRA does not take into account the extraordinary costs that Lakewood incurs to provide transportation and special education services to a large number of nonpublic school students, who total more than 30,000.³⁸

³⁸ N.J.S.A. 18A:39-1 requires Lakewood to provide transportation at public expense for public and nonpublic students who live remote from school; Lakewood is also “responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21,” services which must “[b]e provided at public expense, under public supervision, and with no charge to the parent.” N.J.A.C. 6A:1-1.1; N.J.S.A. 18A:46-1 to -55.

In their second amended petition, petitioners submit that the large sum Lakewood spends on mandatory transportation and special education for private school students “consume[s] about 40% of the [district’s] budget” and means that the money then available for public school students is “substantially less than SFRA’s adequacy budget” for Lakewood. Petitioners allege that “[t]he Commissioner of Education and the State Treasurer have formally recognized [between 2015 and 2018] that SFRA funding is inadequate to provide [Lakewood] public school students with a T&E education by providing, in dramatically increasing amounts, ‘advance state aid’ or ‘emergency loans.’”

However, petitioners maintain that continued receipt of these loans is not only unsustainable, but also unpredictable, and that due to the inexorable rise of nonpublic school students and the associated transportation and special education costs, the district needs sufficient and predictable funding through the SFRA to provide the public school students with T&E. As such, petitioners urge that “the Commissioner recommends that this matter be remedied by the Legislature.”

In response, respondents contend that Lakewood’s financial difficulties are not the result of the SFRA, but instead due to other reasons. These other reasons, according to respondents, include (1) Lakewood’s history of fiscal mismanagement (2) community choices (3) and legislation other than the SFRA.

These reasons proffered by respondents shall be considered in turn and, together with other factors to be discussed, lead to the conclusion that the SFRA is not unconstitutional as applied to Lakewood because the lack of T&E in Lakewood is not due, in significant part, to the SFRA. Put another way, petitioners have failed to prove that, even if Lakewood had taken certain actions within its powers and discretion, the SFRA would still not provide Lakewood with adequate funding to deliver T&E.

Fiscal mismanagement by Lakewood

Respondents persuasively argue that a significant reason for additional unavailable funds for the provision of T&E is choices Lakewood made with respect to the tax levy authorized under the SFRA. Respondents note that, while there is a tax levy cap,

Lakewood chose not to raise the levy to the cap for several years. In particular, “from 2011-2014, as the non-public student population was rapidly increasing in the Township, the District decided to keep the levy stagnant.” And although the state monitor, once installed in 2014, required Lakewood to increase the levy, respondents correctly assert that the decision not to increase the levy during the previous years “means that the District is now not taxing up to its local fair share” and that “not only was the District not generating money that it could have been during that time period, but that any additional revenue from increasing the levy would have compounded.” This is additional revenue that could have gone to support Lakewood’s obligation to provide and fund T&E to its public school students.

Community choices

Respondents also point to other reasons for Lakewood’s financial struggles separate and apart from the SFRA funding formula, including “local choices” such as “zoning for private schools; expansive new construction allowing for an influx of new residents; determinations to send children to non-public schools that mandate transportation due to distance; and the community’s determination not to pass referendums for additional funding pursuant to N.J.S.A. 18A:22-40 or a second question [under N.J.S.A. 18A:7F-39].”

While municipal and community decisions regarding zoning, new construction, and selection of private schools may play roles in Lakewood’s extraordinary transportation and special education costs, respondents did not provide expansive evidence on these subjects, and thus no findings of fact were made regarding those issues.

However, both respondents and petitioners did present certain evidence regarding Lakewood’s efforts, or lack thereof, to raise taxes as permitted under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39. Under N.J.S.A. 18A:22-40, a school district may “raise additional sums of money, over and above the amount fixed and determined in the last annual school budget, by special district tax, for general fund expenses,” and under N.J.S.A. 18A:7F-39, a school district “may submit to the voters at the annual school election, or on such other date as is set by regulation of the commissioner, a proposal or

proposals to increase the adjusted tax levy by more than the allowable amount authorized pursuant to [N.J.S.A. 18A:7F-38]" and, if approved by the electorate, may be used to finance non-T&E programs or services.

The only instance in which Lakewood availed itself of its powers and discretion under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 between school years 2014-2015 and 2018-2019 was in 2016, when Lakewood put to a public vote a referendum to increase the school tax levy to raise more than \$6M to help pay for transportation costs. While that measure was defeated by Lakewood Township voters by a margin of 99% to 1%, N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 at least present opportunities for Lakewood to ameliorate its financial difficulties.

Other legislation

In addition to N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39, respondents point out that there is other legislation outside of the SFRA that has affected Lakewood financially. N.J.S.A. 18A:7F-38 places a tax levy cap on school districts by preventing a school district from seeking "an increase in its adjusted tax levy that exceeds . . . tax levy growth limitation calculated as follows: the sum of the prebudget year adjusted tax levy and the adjustment for increases in enrollment multiplied by 2.0 percent, and adjustments for an increase in health care costs, increases in amounts for certain normal and accrued liability pension contributions." That restriction may be overridden through voter approval under N.J.S.A. 18A:7F-39, as discussed above.

And the annual Appropriations Act also affects the amount of money Lakewood receives through the SFRA. Under the Appropriations Clause of the New Jersey Constitution, "[n]o money shall be drawn from the State treasury but for appropriations made by law." N.J. Const. art. VIII, § 2, ¶ 2. Pursuant to this constitutional clause, "the power and authority to appropriate funds is vested in the Legislature," Burgos v. State, 222 N.J. 175, 206 (2015), and "[o]ur Constitution firmly interdicts the expenditure of state monies through separate statutes not otherwise related to or integrated with the general appropriation act governing the state budget for a given fiscal year." City of Camden v. Byrne, 82 N.J. 133, 162 (1980).

Thus, although the Governor makes budget recommendations to the Legislature, and the SFRA requires that, within two days of the Governor's budget message to the Legislature, the Commissioner "shall notify each district of the maximum amount of aid payable to the district in the succeeding school year . . . and shall notify each district of the district's adequacy budget for the succeeding school year," the amount of aid a district actually receives is dictated by the Legislature's annual Appropriations Act. N.J.S.A. 52:27B-20; N.J.S.A. 18A:7F-5(a). As a result, for the 2018-2019 school year, for example, Lakewood would have received roughly \$13M in transportation aid if fully funded, but only received \$3M through the Appropriations Act; and for the same year, Lakewood's special education categorical aid was supposed to be \$5M, but the Legislature instead appropriated \$3M in such aid.

All of the above supports the conclusion that petitioners have not shown that the SFRA is solely or significantly to blame for Lakewood's inability to provide its public school students with T&E. And there are other reasons, separate from the SFRA, that further support this conclusion.

These reasons include a lack of a comprehensive preschool program and Lakewood's transportation and special education spending, issues that were first identified and highlighted more than a decade ago in the Lakewood Needs Assessment issued by DOE. The purpose of the needs assessment was to "assess[] the adequacy of the educational inputs and programming currently being provided" and to "identify the unique educational needs of the students in those districts requiring additional programs to address them" as "a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their use is guaranteed."

Then, as now, a large portion of Lakewood's budget was devoted to transportation and special education costs. On transportation costs, the Department stated in the needs assessment that "[t]he district is aware that the high cost of transportation, due to increased numbers of nonpublic students, staggered start times and its courtesy busing policy [under which the district opted to spend during the 2008-2009 school year \$4M on busing private school students who did not live remote from their schools], is a significant

financial drain.” The Department recommended that Lakewood reconsider its courtesy busing policy to cut its transportation costs.

In the many years since that assessment, not much has changed. To be sure, Lakewood has taken some steps to reduce some of its transportation costs. For instance, the record shows that Lakewood stopped providing courtesy busing at its own expense in 2016, several years after the Department issued the needs assessment. Also, in response to the 2014 State audit recommendations for reducing transportation costs, Lakewood assured that it would be “piloting a staggered nonpublic school schedule for 7 of the largest nonpublic schools during the 2014-2015 school year based on the premise that all nonpublic schools will go to a staggered school schedule in the 2015-2016 school year, which is expected to greatly reduce transportation costs.”³⁹ The Legislature also provided help to the district through the LSTA pilot program, N.J.S.A. 18A:39-1d, through which the Legislature subsidized the busing of remote nonpublic school children in Lakewood for school years 2016-2017, 2017-2018, and 2018-2019.

Despite these measures, Lakewood’s transportation costs have continued to increase annually, from \$23M in 2014-2015 to \$31M in 2018-2019. Yet there is an absence of evidence in the record to indicate that these rising costs are totally attributable to the rising number of nonpublic school students, and that Lakewood has done everything it can to rein in its transportation costs in order to free up more funds for T&E for its public school students.

As with its transportation costs, Lakewood’s special education costs have continued to consume a huge portion of the district’s budget in the years since the needs assessment. Then, as now, Lakewood has a “large budget expenditure is for out-of-district special education placements, which includes transportation for those students.” In the needs assessment, the Department urged Lakewood to “continue to develop strategies to educate more of its special education students in-district.” However, the record in this matter is short on evidence of the steps Lakewood has actually taken to save money by educating more of its special education students in a district-run program.

³⁹ It is unclear from the record whether all nonpublic schools actually staggered their schedules for the 2015-2016 school year, or any other school year.

The record shows that in 2018-2019, for example, Lakewood sent 343 special education pupils to private school placements at a total cost of \$33M in tuition. That is an average of nearly \$100,000 in tuition per student. Petitioners presented scant evidence of the district's efforts to educate more of these children in-district, which could save Lakewood substantial sums and result in more aid. Indeed, the SFRA provides Extraordinary Aid by which "[t]he State reimburses ninety percent of the costs over \$40,000" for in-district special education programs, while "the State reimburses the districts seventy-five percent of the costs exceeding \$55,000" for private, out-of-district special education placements. That is a substantial difference.

Petitioners may argue that these 343 students could not possibly be educated in-district due to the nature of their disabilities. Even if true, under the SFRA:

A school district may apply to the commissioner to receive additional special education categorical aid if the district has an unusually high rate of low-incidence disabilities, such as autism, deaf/blindness, severe cognitive impairment, and medically fragile. In applying for the aid the district shall: demonstrate the impact of the unusually high rate of low-incidence disabilities on the school district budget and the extent to which the costs to the district are not sufficiently addressed through special education aid and extraordinary special education aid; and provide details of all special education expenditures, including details on the use of federal funds to support those expenditures.

[N.J.S.A. 18A:7F-55(g).]

Petitioners did not present any evidence that Lakewood was ineligible for or tried to avail itself of this statutory option for additional special education aid.

In their amended petition, petitioners themselves suggested another possible avenue for Lakewood to bolster its in-district program by asking the Commissioner to "fully finance the building of an in-district facility for students with extraordinary special education needs pursuant to N.J.S.A. 18A:7G-5(k)" in order to cut down on special

education costs associated with private placements.⁴⁰ Yet there is no evidence Lakewood has applied to the Commissioner for approval of any such project.

Finally, aside from insufficient evidence of adequate efforts by Lakewood to either raise additional revenue or reduce transportation and special education spending in order to provide T&E to its children, another way in which Lakewood could increase its chances at delivering T&E is through a comprehensive preschool program for at-risk children. As the Department suggested in its Needs Assessment one “successful strategy for improving student performance is to provide a high quality preschool program as required by the SFRA.” Certainly, the Legislature recognized through the SFRA that “at-risk children do not always receive the same educational exposure at an early age as their peers” and sought to provide “additional resources necessary through high-quality preschool to prepare every child to learn and succeed.” Nonetheless, Lakewood’s superintendent testified at hearing that the district offers preschool to three- and four-year-old special education students, but only offers general education preschool to four-year-old, and not three-year-old, children. Petitioners have also not provided any evidence that Lakewood has attempted to or is ineligible for any State financing under N.J.S.A. 18A:7G-5 for a preschool facility to accommodate more at-risk, non-special education children.

In light of all these reasons for Lakewood’s lack of additional revenue or additional savings that could buttress the district’s efforts to deliver T&E, reasons separate from the SFRA funding formula as applied to Lakewood, I **CONCLUDE** that petitioners have failed to carry their heavy burden to show that the SFRA is the substantial or a significant reason Lakewood cannot provide T&E such that the SFRA is unconstitutional as applied to Lakewood.

However, the fact remains that petitioners have shown that, for the years at issue, Lakewood’s children did not receive T&E, and that deprivation cannot go unremedied. For their part, respondents assert that the Commissioner has gone to great lengths to assist Lakewood in its obligation to deliver T&E, including the installation of a State

⁴⁰ This provision allows State financial support for certain school facilities projects.

monitor to help with district finances and through the many millions of dollars in advance State aid that Lakewood received between 2015 and 2018. Nonetheless, these measures have not ensured that Lakewood's students receive T&E. Moreover, Lakewood's continued receipt of advance state aid is unsustainable and only serves to exacerbate Lakewood's financial difficulties by requiring Lakewood to repay these loans with future state aid.

As discussed above, there are many steps Lakewood could potentially take to help itself in its quest to provide T&E: develop a comprehensive preschool program for at-risk children; find ways to cut transportation costs so more money may be devoted to educating public school students; improve and expand the in-district special education program to reduce expensive private school placements. Unfortunately, Lakewood has either been unwilling or unable, on its own, to take all necessary steps to deliver T&E to the public school populace. Lakewood needs more help.

That is why, as in Bacon v. Dep't of Educ., 2006 N.J. AGEN LEXIS 108, in which the State Board of Education recognized that "the mandate of the New Jersey Constitution and [the State Board and Commissioner's] statutory responsibility for the general supervision and control of public education in this state require that we exercise our authority . . . to ensure that the educational deficits shown by the record . . . are addressed" through a needs assessment, I hereby **CONCLUDE** and **RECOMMEND** to the Commissioner that she conduct another needs assessment for Lakewood similar to the one conducted under the auspices of Bacon.

The purpose and goal of a new needs assessment would be the same as the needs assessment conducted over a decade ago: "an assessment of the educational needs and the identification of approaches that will successfully address those needs is a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their use is guaranteed." Through a needs assessment, the Commissioner would be able to deploy from within the Department of Education policy experts in the areas of school transportation, special education, and preschool education who could assist Lakewood in identifying approaches and strategies that need to be implemented to ensure that Lakewood can maximize its resources in order

to deliver the thorough and efficient education to which Lakewood's public school students are constitutional entitled.⁴¹

ORDER

The petitioners' application to declare that Lakewood cannot provide a thorough and efficient education to its public school students is **GRANTED**; the petitioner's application to declare the SFRA unconstitutional as applied to Lakewood is **DENIED**. However, based on the record presented, it is hereby **RECOMMENDED** to the Commissioner that a current Needs Assessment regarding the ability of Lakewood to deliver a thorough and efficient education to its public school students be undertaken with appropriate recommendations to the district.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

⁴¹ The petitioners seek a legislative remedy to be proposed by the Commissioner. The Needs Assessment can assist in that regard.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 1, 2021

DATE



SUSAN M. SCAROLA, ALJ (Ret., on recall)

Date Received at Agency:

March 1, 2021

Date Mailed to Parties:

SMS/CB

APPENDIX

WITNESSES

For petitioner:

Dr. Ross Haber
Laura Winters
Robert Finger
Malka Spitz-Stein
Marcy Marshall
Dr. Danielle Farrie
David Shafter
Michael Azzara
Melvin Wyns

For respondent:

Kevin Dehmer
Christopher Soleau
Catherine Anthony
Raymond J. Zirilli, Jr.
Robert Ortley
Glenn Forney

EXHIBITS

For petitioner:

Exhibit 1 Total Classroom Spending taxpayer guide to educational spending
DOE website
Exhibit 1-1 All districts
Exhibit 2 FY2018 Susan Ecks Low-Income Urban and Neighboring Districts
Exhibit 2-1 FY-15 to FY-17

- Exhibit 2-2 Sources
- Exhibit 2-3 Sources for FY-18
- Exhibit 2-4 Key
- Exhibit 3 SFRA numbers for 2017-2018
- Exhibit 4 Lakewood Budget 2016-2017
- Exhibit 5 Lakewood Budget 2017-2018
- Exhibit 6 Request for Admissions
- Exhibit 6-1 Census Information
- Exhibit 6-2 Compilation of Peer Schools School Report Cards 2013-14
- Exhibit 6-3 HSPA and GEPA Scores
- Exhibit 6-4 District graduation rate and list of peer schools (All Abbott)
- Exhibit 7 Census data
- Exhibit 7-1 Per capita income and rank
- Exhibit 7-2 September 2017 Labor force (Lakewood p. 1276)
- Exhibit 7-3 2016 Labor (Lakewood p. 1269)
- Exhibit 7-4 source census data
- Exhibit 8 Birth Rate Lakewood and Newark
- Exhibit 9 Master Plan Demographic page 3 population 220,000 by 2030
- Exhibit 10 Letter of Township Manager
- Exhibit 10-1 Taxpayer Guide to Educational Spending Low-Income Urban and Neighboring Districts
- Exhibit 10-2 followed by all the districts printed out
- Exhibit 11 Non-T & E expenses Low-Income Urban and Neighboring Districts followed by pages from each districts' budget
- Exhibit 12 Lakewood Graduation Rates followed by DOE table
- Exhibit 13 Lakewood Title I allocation public/nonpublic
- Exhibit 13-1 2017-18 public/nonpublic (significant shift)
- Exhibit 13-2 2016-17 public/nonpublic
- Exhibit 13-3 other years' public/nonpublic
- Exhibit 14 2017-18 Students with disabilities and Low-income public/nonpublic
- Exhibit 14-1 other years Students with disabilities and Low-income public/nonpublic
- Exhibit 15 CD Mike Azzara

- Exhibit 15-1 Certification of Hassenfeld
- Exhibit 16 NJ Monthly Rankings
- Exhibit 17 Underfunding
- Exhibit 17-1 Drain on the Budget
- Exhibit 18 Delete
- Exhibit 19 Lakewood CDP
- Exhibit 20 Haber CV
- Exhibit 21 Haber Report
- Exhibit 22 Robinson report
- Exhibit 23 BA Report
- Exhibit 24 Abbot Designation
- Exhibit 25 CD of FY15 to FY18 Notice to Districts State Aid
- Exhibit 26 Nonpublic Transportation Costs
- Exhibit 27 Superintendent Report
- Exhibit 28 NJISAI Report
- Exhibit 29 State Graduation Rate
- Exhibit 30 State PARCC Scores
- Exhibit 31 1994 Letter Superintendent/Commissioner cc Azzara
- Exhibit 32 Superintendent's Letters
- Exhibit 33 Addendum to Census data
- Exhibit 34 Dr. Farrie's Report
- Exhibit 35 2015 SPRA Lakewood
- Exhibit 36 2016 SFRA Lakewood
- Exhibit 37 Title I LHS
- Exhibit 38 NJ LHS School Performance Report
- Exhibit 39 Median Age
- Exhibit 40 Lakewood Revenue Gap updated FY18
- Exhibit 41 Municipal Overburden
- Exhibit 42 16taxes.xls
- Exhibit 43 Urban and Surrounding Districts Property Taxes
- Exhibit 44A Focus and Priority Schools
- Exhibit 45 Toms River Supervisors and Assistant Superintendents
- Exhibit 46 Brick Supervisors and Assistant Superintendents

- Exhibit 47 Jackson Supervisors and Assistant Superintendents
- Exhibit 48 Toms River Personnel Agenda June 22, 2018
- Exhibit 49 Jackson Agenda May 16, 2017
- Exhibit 50 Brick Agenda June 1, 2018
- Exhibit 51 Lakewood Agenda August 30, 2017
- Exhibit 52 Supervisors pp.35-36 Lakewood Agenda August 30, 2017
- Exhibit 53 page 19, June 1, 2011 Agenda abolishing auto shop
- Exhibit 54 page 12, Agenda May 9, 2005 abolishing Subject Supervisors
- Exhibit 55 page 1, Two assistant superintendents September 27, 2004
- Exhibit 56 2006-07, Nonpublic/Public Population
- Exhibit 57 Staff Letter February 18, 2018
- Exhibit 58 February 5, 2018 letter to Commissioner
- Exhibit 59 February 15, 2018 Letter to Commissioner
- Exhibit 60 Certification of Dr. Farrie
- Exhibit 61 Certification of Mr. Henshaw
- Exhibit 62 OPRA February 18, 2018
- Exhibit 63 Statewide PARCC scores
- Exhibit 64 Individual districts PARCC spreadsheet
- Exhibit 65 Lakewood, neighboring districts and DFG A districts PARCC scores
- Exhibit 66 Original March 15, 2018 State Aid Printouts
- Exhibit 67 2018-19 User Friendly Budget
- Exhibit 68 May 7, 2018 State Aid Advance Approval Letter
- Exhibit 69 July 13, 2018 Revised State Aid Printouts
- Exhibit 70 Revised Aid Guidance Document
- Exhibit 71 Certified Agenda-specifically pages 6 and 7
- Exhibit 72 2017-18 Extraordinary Aid Approval
- Exhibit 73 Emergency Aid Resolution
- Exhibit 74 Three State Aid Advance Letters
- Exhibit 75 Melvin Wyns CV
- Exhibit 76 Melvin Wyns Expert Report
- Exhibit 77 Lakewood Tables
- Exhibit 78 2017 Equalization Values
- Exhibit 79 2018 Equalization Values

- Exhibit 80 Lakewood 2008-09 Budget Revenues
- Exhibit 81 Commissioner Letter October 26, 2018

For respondent:

- R-1 2018-2019 Projected State School Aid Notice
- R-2 2018-2019 Projected State School Aid Notice-Revise, Aid Adjustment Pursuant to FY19 Appropriations Act
- R-3 Tax Levy History FY2011-FY2018
- R-4 2016-2017 User Friendly Budget
- R-5 State Total and Lakewood Extraordinary Aid (Exaid) Allocations, FY2012-FY2017
- R-6 Summary of Lakewood 12/13 Enrollment
- R-7 Chapter 192/193 Non-Public School Aid for Lakewood vs. State, FY2009-FY2017
- R-8 Other Non-Public School Aid for Lakewood, FY2015-FY2017
- R-9 Total Public and Non-Public Aid from District Aid Notices (excluding facilities), FY2015-2017
- R-10 Equalized Property Valuation for Lakewood, FY2007-FY2018
- R-11 SSA Summary
- R-12 Equalized Property Valuation for Lakewood, FY2011-FY2018
- R-13 Tax Levy and Local Fair Share History, FY2011-FY2018
- R-14 Equalized School Tax Rate History for K-12 Districts with Between 5,700 and 6,300 Students as of 2017
- R-15 New Jersey State Legislature, Office of Legislative Services, Office of State Auditor, Township of Lakewood School District Audit Covering Time Period July 1, 2011-December 31, 2013 with Lakewood School District Response
- R-16 Summary of Lakewood Public School District Special Education Settlement Agreements for Disenrolled Students
- R-17 Formula for Success
- R-18 Summary of Lakewood Non-Public Transportation
- R-19 Easel Notes 1
- R-20 Transportation Analysis, Lakewood School District FY2013-FY2017

- R-21 [Not offered]
- R-22 Office of Fiscal Accountability and Compliance (OFAC) Review of Application for State School Aid (ASSA) and District Report of Transported Resident Students (DRTRS) as of October 2011, dated May 19, 2014
- R-23 Letter from Robert Ortley, OFAC, to Isaac Zlatkin, Board President, Lakewood Township Board of Education, regarding Corrective Action Plan for May 19, 2014 audit of ASSA and DRTRS, with attachments, dated August 29, 2014
- R-24 OFAC Review of Lakewood Board of Education's Application for Extraordinary Aid (EXAID) for Special Education Costs, for FY2011-2012, dated August 15, 2014
- R-25 OFAC Review of Chapter 193 Non-Public Auxiliary Services Aid, for FY2011-2012, dated February 12, 2016
- R-26 June 16, 2015 Memo from David Hespe, Commissioner of Education to Andrew P. Sidamon-Bristoff, State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-27 June 23, 2016 Memo from David Hespe, Commissioner of Education to Form M. Scudder, Acting State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-28 November 9, 2017 Memo from Kimberly Harrington, Commissioner of Education to Ford M. Scudder, State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-29 Letter from Glenn Forney, Deputy Assistant Commissioner, Division of Finance, to Laura A. Winters, Superintendent Lakewood Township School District, regarding Additional State Aid, dated May 7, 2018 (P-68)



New Jersey Judiciary
 Superior Court - Appellate Division
Amended Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW) LEONOR ALCANTARA, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR E.A.; LESLIE JOHNSON, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR D.J.; JUANA PEREZ, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR Y.P.; TATIANA ESCOBAR INDIVIDUALLY; AND IRA SCHULMAN, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR A.S., PLAINTIFFS V. DAVID HESPE, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF EDUCATION; THE NEW JERSEY STATE BOARD OF EDUCATION; AND THE NEW JERSEY DEPARTMENT OF EDUCATION DEFENDANTS	ATTORNEY / LAW FIRM / PRO SE LITIGANT			
	NAME ARTHUR HOWARD LANG, Esq.			
	STREET ADDRESS 918 EAST KENNEDY BLVD			
	CITY LAKWOOD	STATE NJ	ZIP 08701	PHONE NUMBER 732-609-5530
	EMAIL ADDRESS lakewoodlaw@gmail.com			

ON APPEAL FROM

TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY EDUCATION	TRIAL COURT OR AGENCY NUMBER EDU 11069-14
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Notice is hereby given that **LESLIE JOHNSON, INDIVIDUALLY AND GUARDIAN AD LITEM FOR D.J.; JUANA PEREZ, IND. AND GAD FOR Y.P. AND B.A.; ALLEN SCHULMAN, IND. AND GAD FOR A.S.; AND MAXIMO GALEANA, IND. AND GAL FOR I.G.M AND Y.G.** appeals to the Appellate Division from a Judgment or Order entered on _____ in the Civil Criminal or Family Part of the Superior Court Tax Court or from a State Agency decision entered on **07/16/2021**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

***EXPLAIN BRIEFLY THE REASON FOR AMENDING THE NOTICE OF APPEAL

Fix caption and list of parties.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief pre-trial detention

If post-conviction relief, is it the 1st 2nd other _____ specify

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender self private counsel _____ specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	EDUCATION	09/02/2021
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		09/02/2021
Other parties in this action:		
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	LESLIE JOHNSON, INDIVIDUALLY AND GUARDIAN AD LITEM FOR D.J.; JUANA PEREZ, IND. AND GAD FOR Y.P. AND B.A.; ALLEN SCHULMAN, IND. AND GAD FOR A.S.; AND MAXIMO GALEANA, IND. AND GAL FOR I.G.M AND Y.G.	PAUL L TRACTENBERG, Esq.
		PAUL L. TRACTENBERG
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		(paultractenberg@gmail.com)
		09/02/2021

Attached transcript request form has been served where applicable on the following:

Name	Date of Service
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(*) truncated due to space limit. Please find full information in the additional pages of the form.
 Revised effective: 09/01/2008, CN 10502 (Notice of Appeal)

Transcript Office

Court Reporter (if applicable)

Supervisor of Court Reporters

Clerk of the Tax Court

State Agency

EDUCATION

09/02/2021

Exempt from submitting the transcript request form due to the following:

Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by *N.J.S.A. 22A:2* has been paid.

09/02/2021

Date

s/ ARTHUR HOWARD LANG, Esq.

Signature of Attorney or Pro Se Litigant

BAR ID #

014102012

EMAIL ADDRESS

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(*) truncated due to space limit. Please find full information in the additional pages of the form.

Revised effective: 09/01/2008, CN 10502 (Notice of Appeal)



New Jersey Judiciary
Superior Court - Appellate Division
Amended Notice of Appeal

Additional appellants continued below

Appellant's Attorney Email Address: **paultractenberg@gmail.com**

Plaintiff Defendant Other (Specify)

Name

Client

PAUL L TRACTENBERG, Esq.

**LESLIE JOHNSON, INDIVIDUALLY AND
GUARDIAN AD LITEM FOR D.J.; JUANA
PEREZ, IND. AND GAD FOR Y.P. AND B.A.;
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Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

**PARTY NAME: LESLIE JOHNSON, INDIVIDUALLY AND GUARDIAN AD LITEM FOR D.J.; JUANA
PEREZ, IND. AND GAD FOR Y.P. AND B.A.; ALLEN SCHULMAN, IND. AND GAD FOR A.S.; AND
MAXIMO GALEANA, IND. AND GAL FOR I.G.M AND Y.G. ATTORNEY NAME: PAUL L TRACTENBERG,
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Attorney for Plaintiffs

-----)	
)	
LEONOR ALCANTARA, individually and as)	
Guardian ad Litem for E.A.; LESLIE)	BEFORE THE
JOHNSON, individually and as Guardian)	COMMISSIONER OF
ad Litem for D.J.; JUANA PEREZ,)	EDUCATION OF NEW
individually and as Guardian ad Litem)	JERSEY
for Y.P.; TATIANA ESCOBAR)	
individually; and IRA SCHULMAN,)	AMENDED
individually and as Guardian ad Litem)	PETITION
for A.S.)	
)	
Plaintiffs,)	AGENCY DOCKET
)	156-6/14
v.)	
)	
DAVID HESPE, COMMISSIONER OF THE NEW)	
JERSEY DEPARTMENT OF EDUCATION; the)	
NEW JERSEY STATE BOARD OF EDUCATION;)	
and the NEW JERSEY DEPARTMENT OF)	
EDUCATION)	

Defendants

Petitioners, Leonor Alcantara, individually and on behalf of E.A.; Leslie Johnson, individually and on behalf of D.J.; Juana Perez, individually and on behalf of Y.P.; and Tatiana Escobar; residents of Lakewood, New Jersey who attend or whose children attend Lakewood public schools; and Ira Schulman, individually and on behalf of A.S., resident of Lakewood, New Jersey, whose child attends a Lakewood nonpublic school, by and through their attorney, Arthur H. Lang, Esq., hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and

respondents whose address is the New Jersey Department of Education, P.O. Box 500, Trenton, NJ 08625-0500, pursuant to the authority of the Commissioner to hear and determine controversies under the school laws (N.J.S.A. 18A:6-9), by reason of the following facts:

BACKGROUND STATEMENT

Lakewood, New Jersey is the fastest growing city in the United States. Its population is expected to reach 230,000 by 2030, of which over 100,000 will be school age children.¹ Two out of every 100 children in New Jersey currently go to school in Lakewood. This ratio is projected to increase to one out every ten within a generation. Many of these children will become the future political and economic leaders of New Jersey. The resolution of the issues raised in this petition will affect their welfare and the wellbeing of the entire state.

The relief plaintiffs seek will not open a floodgate of litigation because Lakewood is unique and its facts and circumstances are unlike any other district in New Jersey. Approximately 5,500 students have annually attended Lakewood public schools for the last two decades. By contrast, 25,000 students attended nonpublic schools in 2013-14 reflecting a steady annual increase of approximately fifteen per. The Board of Education has run deficits year for the last two decades in

¹ "Lakewood's population is anticipated to increase by another 50,000 between 2010 and 2020 and yet another 80,000 between 2020 and 2030, for a total increase over the next two decades of 130,000 persons, resulting in a total population of 230,000 by 2030." S. Slachetka & M. Truscott, *Lakewood Smart Growth Plan Prepared for Lakewood Township*, T&M Associates, (2009).

an effort to balance the fiscal strain on its budget designed for 5,500 children with the requirement to provide statutorily mandated remote transportation and constitutionally Free Appropriate Public Education for the most severely handicapped children in a base population five times, and growing, the size of its public school population. The annual \$15 million in state equalization that Lakewood has received for two decades does not fill the drain on its revenues. Lakewood does not have the capacity to provide for a thorough and efficient system of public schools (T & E) on its own.

The Department of Education has been aware of the impending decimation of the Lakewood education program and faculty since 1991 during which time the Commissioner still had the discretion to designate special needs districts. The Department refused any relief claiming that Lakewood had real property wealth and was irresponsibly appropriating its wealth on discretionary non-remote transportation rather than on T & E.

It is time to set the record straight. Lakewood is one of the lowest income municipalities in New Jersey. Plaintiffs will demonstrate the fallacy of the Department's reasoning and its gloss over the true cause of the failure of Lakewood as a public school district. It is not "courtesy" busing. It is not "fiscal mismanagement." The numbers simply do not add up. The heart of the matter is *the state does not acknowledge the existence of 25,000 children* and growing. By not counting five-sixth of the student population, Lakewood is falsely deemed wealthy, its district is labeled as "above adequacy," and the most needy children in the state are neglected of a public education.

COUNT I

1) The State does not provide for a system of Thorough and Efficient Public Schools (hereafter T & E) in Lakewood because not all of its children count. The School Finance Reform Act of 2008 (hereafter SFRA) counts 5,500 children registered in Lakewood public schools for the purpose of determining educational adequacy and state funding. The district actually provides mandated services for 30,500 K-12 children. The neglect of the state to acknowledge the existence of 82% of Lakewood's K-12 children in the calculation of the adequacy budget and the local fair share has devastated the capacity of one of the lowest income municipalities in the state to provide for its public school students.

2) The 2014-15 local Board of Education budget allocates \$23,145,180 for extraordinary special education tuition and \$18,325,244 for transportation, of which \$15,000,000 is for mandated remote bussing, serving a population of 30,000 resident children out of a total operating budget of \$114,661,752. The appropriation of \$38 million dollar in mandated services will deplete one third of the operating budget next year from T & E. (Exhibit 1)

3) This imbalance increases every year. Lakewood is the fastest growing municipality in New Jersey with an estimated population of 108,900 in 2014. (Exhibit 2). The birthrate of 1,539 in 1995 increased to 3,849 in 2010, or 41.4 births per thousand people. To put this number in perspective, in 2010 there were 4,294 births, or 17.3 per thousand in Jersey City, and 4,202, or 15.2 per thousand in Newark. The Lakewood

population is expected to reach 131,857 in 2019. Spending on mandated transportation and extraordinary special education services for this multitude will increase to \$58,017,045. (Exhibit 3).

4) By contrast, public school enrollment has been relatively constant over the last 18 years despite a small increase in 2014-15. (Exhibit 4). Hence, the operating budget and SFRA adequacy is not expected to increase significantly. Moreover, the state aid and tax levy growth limitations lag behind any increase in enrollment. It is fair to conclude that the transportation and extraordinary special education expenses projected at \$58 million will consume over half the operating budget in 2019 requiring drastic reductions in force of teachers.

5) Lakewood taxpayers have been stretched to the limit of their financial capacity to try to fill the gap. The \$84,693,837 general fund levy for 2014-15 is 18.8% more than the local fair share of \$71,198,357 under the SFRA (Exhibit 5).

6) The levy of \$84,693,837 is the maximum local taxation allowable under *NJSA 18A:7F-38*. The Board of Education exhausted its \$1,872,480 in banked cap under *NJSA 18A:7F-39*. These statutes limit the authority a board of education to levy additional taxation. (Exhibit 6).

7) The Lakewood adequacy budget pursuant to *N.J.S.A. 18A:7F-51* is \$88,338,309 for the purpose of educational adequacy and state funding. (Exhibit 5). Lakewood is considered to be

spending "above adequacy" because the sum of its local levy of \$84,693,837 and equalization aid of \$15,263,034 is \$99,956,871. (Exhibit 7). This is \$11,618,562 more than adequacy calculated according to this statute.

8) Subtracting the \$40,184,235 spent on transportation and extraordinary special education expenses from the adequacy budget leaves only \$59,772,636 for T & E. It is clear that Lakewood is *significantly below adequacy*.

9) Adequacy is defined by another statute for the purpose of the 10% state aid growth limitation. The Lakewood adequacy budget pursuant to *NJSA 18A:7F-47* is \$93,476,013. This statute defines adequacy as the sum of the local fair share, equalization aid, special education categorical aid and security aid. (Exhibit 8). Lakewood is considered to be spending "above adequacy" according to *NJSA 18A:7F-47* because the \$107,701,339 operating budget in 2013-14 is more than the said sum. Subtracting the \$40,184,235 spent on transportation and special education expenses from the operating budget leaves only \$67,517,104, an amount that is \$25,958,909 below adequacy of \$93,476,013.

10) Lakewood sent 207 students with extraordinary needs to private schools for the disabled in 2013-14. The number increased to 276 in 2014-15 budget. All of these children are registered as public school students. The numbers are consistent with the Abbott/SDA urban districts (hereafter "urban districts") of one out of every 114 children because the 207 and 276 Lakewood students with extraordinary needs opting for a FAPE came out of respective base populations of

27,000 in 2013-14 and 30,500 in 2014-15. Paterson, by way of example, has a regular enrollment of 26,994 and sends 236 students to schools for the disabled.

11) The SFRA does not contemplate expenses of such magnitude and their effect on T & E in Lakewood because it *fails to count all the children* in its adequacy formula. Certainly many districts suffer insufficient state aid for transportation and extraordinary special education expenses but the deficiency in those districts is offset by a proportional and commensurate regular public school student count in the T & E budget. Lakewood, by contrast, serves a base of 30,500 resident children while its SFRA student count is 5,500.

12) The 2013-14 total of \$40,184,235 for extraordinary special education and transportation services consumed 37.3% of its \$107,701,339 operating budget. This percent is substantially more than that of any other large district or any regular operating district not in a sending/receiving relationship with another district (for which high tuition expenses are expected *for regular education*). The average transportation and tuition expense in urban districts is 11.9% of the operating budget.

13) The 2013-14 local tax levy of \$77,097,641 represented a five million dollar tax increase over 2012-13 tax levy and was *8.3% more than* the SFRA local fair share of \$71,198,357. This excess taxation was yet insufficient to cover expenses resulting in a midyear deficit necessitating the district to

borrow another five million dollars in advance payments on state aid pursuant to *N.J.S.A. 18A:7A-56*.

14) Lakewood is in reality spending below T & E adequacy even though the tax levy per pupil in 2013-14 of \$14,077 was *four times higher* than the average urban district. (Exhibit 8). Despite taxation at the maximum allowed under the law, per pupil spending is officially only \$11,652, about two standard deviations below the urban average of \$17,289 per student. Classroom spending per pupil is officially \$6,667, more than two standard deviations below the urban district average of \$9,804. (Exhibit 9).

15) A question exists whether it is possible to provide T & E education when mandated special education services and transportation for 30,500 children in Lakewood consumed 37% of its adequacy budget of \$88,338,309 in 2013-14 (($\$19,389,392$ extraordinary needs tuition - $\$2,975,869$ in extraordinary need state aid) + ($\$20,979,587$ transportation expense - $\$4,500,000$ in transportation state aid) = $\$32,893,110$). The drain on the adequacy budget increases to 43% in 2014-2015 (($\$25,276,951$ extraordinary needs tuition - $\$2,975,869$ in extraordinary needs state aid) + ($\$18,325,244$ transportation expense - $\$3,000,000$ in transportation state aid) = $\$37,625,619$). This amount is one-third of the 2014-15 operating budget adopted under the maximum statutory tax levy. The fiscal strain is only expected to exacerbate. Transportation and extraordinary special education expenses are expected to increase to $\$58,017,045$ in 2019 consuming 50% of the operating budget.

WHEREFORE, Plaintiffs petition the Commissioner to recommend to the governor the creation of new categorical aid in his budget and/or to implement any and all remedies within his authority to fill the deficiencies in the adequacy budget of Lakewood.

PLAINTIFFS further petition the Commissioner to recommend that the legislature provides for an adjustment to the SFRA to account for all of the children in Lakewood either directly in the calculation of the adequacy budget or indirectly in the calculation of the local fair share because the SFRA as applied to Lakewood is currently unconstitutional as it is impossible to provide T & E under provisions designed for 5,500 children when in reality the district serves a resident population of 30,500 children and growing.

PLAINTIFFS further petition the Commissioner for a declaratory ruling pursuant to *N.J.A.C. 6A:3-2.1* that the state aid growth limitation is inapplicable to any and all possible remedies.

COUNT II

16) All of the allegations contained in the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

17) The failure of the State to provide adequate funding has dramatically affected T & E in Lakewood and is deleterious to the achievement of its most needy public school students. 92% of Lakewood public school students are "at risk" as defined by the SFRA.

18) The district has inadequate funding and does not provide special education students with pullout support in Lakewood High School (hereafter LHS). Surrounding districts with much lower percentages of low-income children provide special education students with small group or individualized pullout instruction.

19) LHS provides some special education students with an in-class support teacher in addition to a regular subject instructor while other students are provided only with a special education teacher without a regular education teacher.

20) The district has inadequate funding and does not provide Limited English Proficiency (LEP) students with pullout support in LHS. Surrounding districts with much lower percentages of low-income children provide LEP students with small group or individualized pullout instruction.

21) The district has inadequate funding and does not provide special education students in LHS with in-class support or any special education services for science or social studies.

22) The district has inadequate funding and does not provide LEP students in LHS with in-class support or any LEP services for science or social studies.

23) The district has inadequate funding and does not employ intervention and remediation specialists in LHS.

24) The deficiencies in funding have affected achievement in the elementary schools, middle school and high school. Lakewood students score substantially lower than the state average in every grade level on the NJ ASK. (Exhibit 10). 44.8% of students in LHS were proficient or advanced proficient in the 2013 mathematics HSPA, almost half the state average of 79.7%, and substantially below the 60.8% median of the urban districts and substantially below the 55.2% average of the urban districts. 70.7% of students were proficient or advanced proficient in the 2013 language arts HSPA, substantially below the state average of 91.6%, and below the urban median of 77.8% and the urban average of 75.5%.

25) *LHS is ranked 324 out of 328* New Jersey high schools in the New Jersey Monthly high school rankings of School Environment, Student Outcomes and Student Performance. (Exhibit 11)

26) The district has inadequate funding and employs only *one supervisor* of curriculum and instruction in charge of both mathematics and science for all its elementary schools, middle school and high school. The district has inadequate funding and employs only *one supervisor* of curriculum and instruction in charge of both language arts and bilingual education for all its elementary schools, middle school and high school. Other districts employ supervisors for each subject and/or employ supervisors in each school building.

27) Heating, air conditioning and the roofs in the public schools are deteriorated. The district proposed a facilities

rehabilitation project with an eligible cost of \$29,371,401 but it is unlikely that the voters will approve these repairs given the 2014-15 school tax increase of seven million dollars and the extremely low income of the tax base. “[D]eficiencies in these areas directly affect the health and safety of the children. . . .” *Abbott by Abbott v. Burke (Abbott V)*, 153 N.J. 480, 520 (N.J., 1998).

28) The popular wood shop, metal shop, and auto shop in LHS were closed due to the financial strains of inadequate funding. Their teachers were dismissed and the industrial arts wing of the high school was renovated to make room for the board office last year. For the “many students in poor urban districts [who] presently do not continue their education beyond high school (and many do not even finish high school), vocational education is particularly important in providing entry level job skills.” *Abbott v. Burke*, EDU 5581-85 (initial decision), August 24, 1988, <http://njlegallib.rutgers.edu/legallib/njar/v13/p0001.pdf> (hereafter Lefelt) at 179.

29) Inadequate funding has made the marching band and music program of LHS a shadow of its former glory as one the finest equipped and best instructed in the state a decade ago. “For students who are interested in music, urban students are taught in poorer facilities, and are offered fewer courses and performance opportunities and a later start in music education than their suburban counterparts.” *Id.* at 224 Moreover, LHS formerly employed a Latin teacher, a media production teacher, and teacher aids to help with instruction in general. The rich curriculum of a decade ago has been

reduced to meeting basic requirements for graduation due to inadequate funding.

30) LHS has had a new principal every year or second year for almost a decade. New teacher turnover is extremely high. The average years of service of veteran Lakewood teachers has drastically declined over the last decade. The median salary of \$49,639 in Lakewood was the lowest of any large K-12 districts (3501 + students) in 2011 due to the inadequate funding. The 2012 median salary of \$50,069 was substantially lower than the state average median salary of \$62,683.

31) Out of 83 first to third grade classes, fifty have 22 or more students in the classroom, 32 have 25 or more, 19 have 27 or more. Out of 45 fourth and fifth grade classes, 18 have 24 or more. (Exhibit 12). Since 92% of Lakewood students are defined as "at-risk," Lakewood class sizes exceed the maximum number as set by *N.J.A.C. 6A:13-3.1*. "Class size in school districts in which 40 percent or more of the students are 'at-risk' as defined in P.L. 2007, c. 260 shall not exceed 21 students in grades kindergarten through three, 23 in grades four and five and 24 students in grades six through 12." *Id.*

32) Other deficiencies in T & E, particularly those in the middle school and elementary schools, will be disclosed during discovery.

WHEREFORE Plaintiffs petition the Commissioner to make a declaratory ruling that Lakewood is inadequately funded.

Plaintiffs further petition the Commissioner to provide any and all administrative remedies and to recommend any and all legislation that will correct the SFRA as applied to Lakewood because its students *actually* do not receive the constitutionally mandated T & E education.

Plaintiffs further petition the Commissioner to recommend to the legislature the full financing of the rehabilitation of Lakewood schools or the building of new facilities pursuant to *N.J.S.A. 18A:7G-5(k)* which provides that a "district factor group A or B . . . district may apply to the commissioner to receive 100% State support for the project and the commissioner may request the approval of the Legislature to increase the State share of the project to 100%." Lakewood meets the eligibility requirements under *N.J.A.C. 6A:26-3.7(j)* and was "district factor group A or B as of July 18, 2000." *Id.*

COUNT III

33) All of the allegations contained in the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

34) Lakewood is an urban district and is recognized by the Department of Education as a peer of the Abbott/SDA urban districts ("urban districts") for the purpose of comparative achievement in the Department's performance reports. One hundred forty seven schools from almost every former *Abbott* district are listed as peers of Lakewood schools. Only four *non-Abbott* DFG A or B schools are peers of any Lakewood school. (Exhibit 13)

35) The population of Lakewood, estimated at 108,900, is more than twice the median population of the average urban district supporting the conclusion that Lakewood is an urban district and should be treated as such.

36) The Department formerly used population density to aid in its designation of lower income urban districts. The density of Lakewood Census Designated Place (CDP), in which the majority of the 30,500 resident student live, is 7,602 persons per square mile, slightly less than the median urban district, but almost seven times denser the New Jersey average. (Exhibit 9)

37) 94% of Lakewood public school students are Hispanic or African American. (Exhibit 16). The poverty rate of Lakewood is 33.1%, almost two standard deviations more than the urban average of 20.72%. (Exhibit 9). 92% of Lakewood public school students are eligible for free and reduced lunch substantially more than the urban district average of 76%. (Id.)

38) The labor force of New Jersey is 51.3% of its population. The labor force of the average urban district is 38.1% of population. The labor force of Lakewood is only 30.3% of the population. Only 30 working people provide for the shelter and subsistence of every 100 people in Lakewood. This is due to the fact that almost half, 48.4% of the population of Lakewood CDP, is under 18, whereas the state average is 23.5%. The ratio of working adults to young K-12 children is too small and the income supporting their large households is

too low to provide adequate T & E in the public schools without help from the state. To wit, the median household income in Lakewood is \$41,527 and the median household income of Lakewood CDP is \$36,516. The state average median household income is \$113,162 and the urban average is \$44,967.

39) The typically large Lakewood family *shares its home* with another family because it cannot otherwise afford to pay its property taxes. This is not wealth. It is clear to anyone familiar with housing in Lakewood that a large percent of households reside in "single family dwellings turned into multiple family dwellings." Lefelt at 32.

40)

41) The failure to fund Lakewood as a low income urban district has affected achievement. Only 43% of Lakewood High School graduates are in postsecondary school after 18 months, more than two standard deviations below the urban average of 61.84%. The dropout rate of Lakewood High School is 4.7% almost double the urban median of 2.3%. The graduation rate is 71%, slightly below the urban average of 72.5%.

42) The Robinson and Abbott cases coined the term "municipal overburden" to denote the excess expense of maintaining adequate police, fire and sanitary services in the urban areas. The cost of these services in urban areas causes fiscal pressures on the tax base that strain its capacity to adequately provide funding for T & E. The expenses of the Abbott districts **PALE IN COMPARISON** to the fiscal pressures on the Lakewood tax base, that of one of lowest *household* and

per capita income municipalities in New Jersey, in providing mandatory services for all its children under a statute that counts only 5,500, while independently paying hundreds of millions for the nonpublic education of 25,000 of its children.

43) The SFRA cost of educating all 30,000 children in Lakewood would be \$553,513,871 (\$455 million using 2011-12 numbers, exhibit 14) or 43% of Lakewood's aggregate income of \$1,280,273,414. The true expenditure of Lakewood families for the K-12 education of 25,000 nonpublic children is probably closer to \$300 million per year, one quarter of the aggregate income of the whole tax base. By contrast, the state average local cost of education is 4.5% of aggregate income. The education of the non-public school students "must also be met out of the same tax base and the total demands exceed what the local taxpayers are willing or able to endure." *Robinson v. Cahill*, 62 N.J. 473, 499 (N.J. 1973).

44) Moreover, the local school levy is \$84.5 million, 6.6% of income; the municipal levy is \$49.1 million, 3.8% of income; and the county levy is \$28.3 million, 2.2% of income. The municipal, school and county taxes in Lakewood are 12.1% of aggregate income whereas the average in the urban districts is 10.2%.

45) Municipal overburden ought not to be limited to the de jure expenses of municipal government but indicative of the de facto inability of the local capacity to support T & E education due to the competition for and depletion of the financial resources of the tax base. It "is a factual

conclusion." *Abbott II*, 119 N.J. 287, 357 (June 1990). Hence, the municipal overburden of the local school, county and municipal taxes *and the local educational cost of 30,500* children amounts to *one third of the aggregate income* of Lakewood residents.

46) The method formerly used by the Department to determine the financial capacity of the local tax base by dividing property valuation and income by registered pupils rather than per capita property value and per capita income projected a false perception of wealth in Lakewood. It failed to account for the true number of K-12 children competing for the paltry financial resources of Lakewood families and of the district, thereby unconstitutionally depriving public school students of adequate state equalization aid and of T & E.

47) Administrative Law Judge Lefelt in the original *Abbott* case specifically ruled "urban aid municipalities had considerably less fiscal capacity when measured by *per capita* income and property taxes *per capita*." Lefelt at 262 (emphasis added). The equalized property per capita of Lakewood is \$65,525 whereas the urban average is \$61,135. The state average is \$130,334. The per capita income of Lakewood is \$16,430, ranking 555 out 564 municipalities in New Jersey. The per capita income in Lakewood CDP is \$11,654. Both are substantially lower than the urban average per capita income of \$22,585 and the state average of \$39,940.

48) Local taxpayers in Lakewood have been forced to lease their personal living space in order to pay their taxes

because the Department determined local capacity using an arbitrary and capricious methodology without analysis as to its validity in Lakewood. Ability to adequately support T & E was determined not by per capita property wealth *in which all of the children would count*, but by the ratio of property value to K-12 registered public school students, a number that fails to account for over 82% of the children.

49) If all of the children of Lakewood attended the public schools costing the state an extra \$500 million a year, equalized property value per student would be only \$237,857 using the capricious former methodology, far below the average urban district property value per student of \$377,021. As if *by the wave of the wand*, since the vast majority of children in reality attend nonpublic schools, the Lakewood tax base, that would have otherwise been considered to be one of the poorest in the state had those children attended public schools, is determined by this arbitrary and capricious methodology (of dividing Lakewood property wealth by enrollment) to be "property wealthy."

50) It is not the taxpayer who has suffered the most under this irrational methodology of determining wealth, but *the children in Lakewood public schools that are not provided with T & E*.

51) Chief Justice Wilentz could have been describing the public school children of Lakewood and their need for adequate state aid when he described urban students as living "in a culture where schools, studying, and homework are secondary. Their test scores, their dropout rate, their

attendance at college, all indicate a severe failure. . . ." *Abbott v. Burke (Abbott II)*, 119 N.J. 287, 295 (N.J. 1990).

WHEREFORE Plaintiffs petition the Commissioner for a declaratory ruling that Lakewood is and ought be designated an urban district with special needs as great or greater than the urban districts that are entitled to full SFRA funding because of their "status akin to that given to wards of the State." *Abbott v. Burke*, 206 N.J. 332, 340 (*Abbott XXI*, 2011).

Plaintiffs further petition the Commissioner for any and all administrative remedies to address the special needs of Lakewood students and to make any and all recommendations to the legislature to adequately rectify the years of neglect.

COUNT IV

52) All of the allegations contained in the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

53) The Department of Education was arbitrary and capricious in 2004 when it removed Lakewood from the list of District Factor Groups (DFG) that categorizes districts according to socio-economic status. Lakewood was declassified because "methodological decisions were made to avoid classifying a school district in an inappropriate DFG category[;]. . . districts in which more than half of the school-aged population is enrolled in non-public schools were not classified in a DFG."

<http://www.state.nj.us/education/finance/rda/dfg.shtml>

54) On its face, the "methodological decision" to exclude Lakewood from the DFGs is seemingly consistent with a subsequent 2010 Education Law Center report, "Is School Funding Fair?" The report lists four *Fairness Measures* in state school funding, one of which is *Coverage*.

Coverage is "[t]he share of the state's students in public schools, and the median household income of those students, is an important indicator of the distribution of funding relative to student poverty (especially where more affluent households simply opt out of public schooling), and the overall effort to provide fair school funding."

http://www.schoolfundingfairness.org/National_Report_Card_2010.pdf at 9. (Exhibit 15). *Coverage* assumes that a "higher percentage of students in public schools requires a greater state funding effort." *Id.* at 29. This is certainly valid for New Jersey in the aggregate, in which the median household income of nonpublic school families is \$131,709 and the median household income of public school families is \$100,837.

55) It is fallacy to conclude the inverse: a lower percentage of students in public schools requires a decreased state funding effort. This is particularly false in Lakewood where the median household income is \$41,527 and the median household income of Lakewood CDP, where the vast majority of public and nonpublic school students live, is \$36,516. The state average median household income is \$113,162 and the urban average is \$44,967. It is highly unlikely that the median household income limited to nonpublic families should differ significantly when 83% of children attend nonpublic schools.

56) The United States Census American Community Survey reports that the population of Lakewood was 92,443 in 2010.

The per capita income of \$15,584 is the ninth lowest in New Jersey. If Leisure Village CDP and other largely senior citizen census designated places in Lakewood are eliminated from the data, we are left with Lakewood CDP, where the per capita income is \$11,654, the lowest in any CDP or area in the state.

57) 70% of 25,000 nonpublic school students receive free and reduced lunch and are from families below the poverty line. (Exhibit 16). They are not from "more affluent households [that] simply opt out of public schooling" but together with their parent taxpayers constitute a single class of citizens that have been unfairly discriminated against and capriciously determined to have disposable wealth because their children attend nonpublic schools in order to get a religious education.

58) This arbitrary and capricious generality bolstered the ancient and commonly heard stereotype of the class of citizens making up the majority of taxpayers in Lakewood as wealthy, and created the popular misconception that Lakewood has sufficient capacity to provide T & E without increased state aid effectively denying its public school children an adequate education. It precluded the perception of its special needs status, and chilled any effort by legislators in 2007 to designate Lakewood as eligible for 100% state financing as a School Development Authority district and/or to adjust the funding statute to address the unique challenges of the district.

59) The Department erred and overgeneralized thereby eliminating any and all socio-economic indicators "relative

to student poverty" in Lakewood in its policy. Lakewood was simply declassified. Its taxpayers have money. Its children do not count in the eyes of the Department. Nor does their district.

WHEREFORE Plaintiffs petition the Commissioner to retroactively classify Lakewood as a DFG A urban district.

PLAINTIFFS further petition the Commissioner to issue a declaratory ruling that Lakewood was otherwise eligible for "education opportunity aid or preschool expansion aid in the 2007-2008 school year," that Lakewood qualifies for 100% facility financing under the School Development Authority pursuant to *NJSA 18A:7G-3* and that going forward, Lakewood shall receive the same full preschool expansion aid as the other urban districts.

COUNT V

60) All of the allegations contained in the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

61) The SFRA does not fund special education in New Jersey based on the actual count of students opting for FAPE, but by a fixed ratio of 14.69% of total public school enrollment. This underfunds Lakewood children in violation of the Equal Protection Clause of the Fourteenth Amendment. The base K-12 population of 30,500 students with the right to FAPE is almost six times greater than regular enrollment. A student

can reasonable expect to receive a viable FAPE without resort to expensive litigation given that funding is adequate for only 809 students (14.69% of 5,500) while 4,407 children (14.69% of 30,000) are assumed to be eligible for FAPE. In actuality, 3,547 nonpublic students and about 750 public school students were eligible for FAPE in 2010. Hence, the actual count of students eligible for FAPE is not 14.69% of district enrollment, but a number equal to *almost 80% of the entire public school enrollment.*

62) The Department of Education misled the *Abbott XX* Court stating that the "census-based method only accounts for one-third of the special education funding. SFRA funds the other two-thirds of special education costs by allocating an excess dollar amount for each special education student in a district." *Abbott v. Burke* 199 N.J. 140 (2009) (*Abbott XX*). Census-funding accounts not for only one-third of special education funding but for all special education funding. There is not provision in the formula to count "each special education student in a district."

63) The consultant hired pursuant to *N.J.S.A. 18A:7F-55(f)* to study the impact of census-funding "drew two tentative conclusions from the existing data: (1) New Jersey might need to consider funding special education based on the actual enrollment of special education students in districts and (2) the state might need to consider some differentiation of funding for higher cost students before the extraordinary aid threshold is reached ." Augenblick, Palaich and Associates, *Analysis of New Jersey's Census-Based Special Education Funding System*, Prepared for the New Jersey Department of

Education. (2011) at 49. Both recommendations are pertinent to Lakewood.

64) 207 children with extraordinary needs in Lakewood were found and evaluated out of the population of 30,500 children and provided with an FAPE at a cost of \$19,053,992 in school year 2013-14 and 276 children at a cost of \$25,275,951 in 2014-15. These children are registered public school children. The number and cost has increased every year as the population has increased. The cost, which was 11% of the operating budget in 2006, is now 22% for 2014-15. Yet, the addition of each one of these children brings in only 14.69% of the base cost allocated by the SFRA for special education children.

65) The urban districts average 114 enrolled students for each child they send to a private school for the disabled. The total number of enrolled resident students funded in the typical district adequacy budget more or less offsets the expenses of students in need of extraordinary services send to private schools for the disabled. Lakewood, by contrast, had only 26 enrolled students for each student sent to a private school for the disabled in 2013-14 and only 22 in the 2014-15 operating budget. (Exhibit 8). By counting only the 5,500 enrolled students in special education funding, the Department ignores the fact that the pool of Lakewood students offered an FAPE is 30,500.

66) Lakewood is not over classifying. Large districts such as Paterson, with an enrollment of 26,423, sends 236 students to private schools for the disabled; Newark, with an enrollment

of 45,327, sends 432 students. The 207 students in need of extraordinary services in Lakewood sent to private schools for the disabled is one out of 130 given the base population of 27,000 in 2013-14, well within a standard deviation of the urban average of one out of 114.

67) The Department violates the right of all students with disabilities of equal protection of the law under the Fourteenth Amendment to the Federal Constitution because the local capacity in Lakewood cannot provide the extraordinary special education expenses for a population of 30,500 on a budget designed for 5,500. The Department also indirectly violates the T & E Clause of the New Jersey Constitution every time a classified special education child wins a court order affirming his or her constitutional right to FAPE because the addition of each new student disproportionately decreases funds available for T & E of all public school regular and special education students in Lakewood.

68) The deficiency of funding has lead to less support of special education students in the public schools and has affected their achievement. 38.5% of special education students in Lakewood were proficient or advanced proficient in the 2014 language arts HSPA. 2.6% special education students were proficient or advanced proficient in the 2014 mathematics HSPA. (Exhibit 17). Both percentages are substantially below the State average of special educations students in 2013 of 67.8% in language arts and 38.2% in mathematics.

69) Failing to provide adequate education to public school children with special needs is discriminatory under the United States Constitution, §504 of the Rehabilitations Act, and the Americans with Disabilities Act.

WHEREFORE Plaintiffs petition the Commissioner for declaratory ruling that the SFRA census count is unconstitutional as applied to Lakewood.

PLAINTIFFS further petition the Commissioner for a declaratory ruling that the provision of \$3,000,000 in extraordinary aid is inadequate given that extraordinary costs are depleting the operating budget in Lakewood and to recommend to the legislature the provision of full extraordinary aid under the SFRA for Lakewood.

PLAINTIFFS further petition the Commissioner for additional special education categorical aid pursuant to *N.J.S.A. 18A:7F-55* (g) due to "the impact of the unusually high rate of low-incidence disabilities on the school district budget and the extent to which the costs to the district are not sufficiently addressed through special education aid and extraordinary special education aid."

PLAINTIFFS further petition the Commissioner to remedy the drain of extraordinary tuition costs on T & E by recommending to the legislature to fully finance the building of an in-district facility for students with extraordinary special education needs pursuant to *N.J.S.A. 18A:7G-5(k)* so that students with those needs may remain in-district allowing 90% of costs above \$40,000 to be coverable by the state under *NJSA*

18A:7F-5 rather than 75% of expenses above \$55,000 currently coverable for students sent to private schools for the disabled.

COUNT VI

70) All of the allegations contained within the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

71) The state formula rewards the taxpayers in districts with large ratios of public school students to nonpublic school students while it has been apathetic toward the fiscal strain of the unique circumstances of Lakewood. Newark, 554 in per capita income, with 93.1% of its K-12 population in public schools, taxed \$46 million below its local share in 2013 returning 6.2% of its adequacy budget to its taxpayers. Paterson, 556 in per capita income, with 97.7% in public schools, taxed itself 44.7 million less than its share returning 9.9% of its adequacy budget to taxpayers. Among the districts bordering Lakewood, Toms River Regional with 95% in public schools taxed itself \$67.7 million less than its share returning 28% of its adequacy budget to its taxpayers. Brick with 93.7% in public schools taxed itself \$23.6 million below its share returning 18.3% of its adequacy budget to taxpayers. Jackson with 95.9% in public schools taxed itself \$6.1 million below its local share returning 5.1% of its adequacy budget to its taxpayers. These districts were able to lower taxes because their SFRA adequacy budgets and commensurate state funding by and large reflected their true

operating costs. Extraordinary special education and transportation costs were more than offset by a sufficient count of enrolled regular education students.

72) Had all 30,500 K-12 children registered for the public schools, Lakewood would be eligible for over \$400 million in equalization aid while the local fair share would remain \$72 million. Like its sister districts, Lakewood also would be sufficiently funded to cut into its adequacy budget and tax itself below its local fair share. But in reality, Lakewood, with only 16.7% of its K-12 population in public schools, not only foregoes over \$385 million in equalization aid, it taxed itself \$5.9 million *more than its local share* in 2013-14 and \$13.4 million or 18.8% *more than its fair share* in 2014-15.

73) The failure of the state to provide adequate funding in Lakewood has deprived the citizens and taxpayers of the discretion, not to return millions dollars from their adequacy budget to their pockets, but to provide non-remote hazardous route transportation to all 30,500 of its students under *N.J.S.A. 18A:39-1.5*. The loss of discretionary spending has endangered the safety of its children, and their safety ought to count even if the children themselves do not count. The loss of the bussing will cause traffic and logistical problems beyond the capacity of the municipal infrastructure to handle.

74) Irreparable harm will result and an overriding public interest calls for relief on this issue because the failure of the state to provide T & E in Lakewood has forced the Lakewood Board of Education to tax its already overburdened

base up to the statutory maximum, \$13.5 million above the local fair share, yet still insufficient for T & E given the extraordinary special education and remote transportation expenses, with nothing left over for the transportation for 10,450 of its children who must walk to school along hazardous nonremote routes.

WHEREBY Plaintiffs petition the Commissioner for relief by fully funding the Lakewood Board of Education with its full \$9,027,679 of transportation aid under the SFRA and/or to recommend to the legislature for other categorical aid that will remedy to transportation crisis in Lakewood.

COUNT VII

75) All of the allegations contained within the paragraphs above and below are hereby incorporated by reference as if fully set out herein.

76) The district administration has been warning the state of its unique circumstances asking for special needs status for over two decades. (Exhibit 18). The state has turned a blind eye for too long.

77) A statute that determines the financial capacity of the local tax base by its income and property value without counting 25,000 K-12 children that it must support and serve is irrational under the due process clause of the United States Constitution and the New Jersey Constitution, and perhaps even discriminatory.

78) The legislature cannot constitutionally remedy the deficiency of T & E in Lakewood by simply eliminating its mandate for remote transportation without having a disparate impact, if not disparate treatment, toward a protected class of citizens. Nor is it rational to deprive families that send their children to nonpublic schools in Lakewood of the same services such as remote bussing offered to families similarly situated in other areas in the state in which they are less concentrated.

79) The argument that families that generally send their children to nonpublic schools should forfeit the right to FAPE for their most needy children is repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The argument that the Board of Education should not provide nonpublic children with remote transportation to and from school is not only unrealistic and contrary to the statute, but "it has never been judicially suggested that the exercise of the basic right to forgo a public education in favor of equivalent instruction precludes a person of availing himself of any state supported educational service or facility." *Alpert v. Wachtung*, 13 N.J.A.R 110, 117 (1986). It is counter-intuitive and irrational that a municipality that saves the state over \$400 million dollars a year in equalization aid should be forced to abandon "any state supported educational service or facility" for 25,000 of its children because the legislature inadequately performs its constitutional duty of providing a T & E for 5,500 children.

WHEREBY Plaintiffs petition the Commissioner for a declaratory ruling that all of Lakewood students are entitled to the same services for which students similarly situated elsewhere in New Jersey are entitled and to foreclose the possibility of a remedy that disparately impacts the children of Lakewood or that forces them to forego their rights and privileges under the current law.

/s/Arthur H. Lang

Arthur H. Lang
Attorney for Plaintiffs

Dated June 16, 2014

* * *

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for Y.P.; TATIANA ESCOBAR)
individually; and IRA SCHULMAN,) Agency Ref. No.:
individually and as Guardian ad Litem) 156-6/14
for A.S.)
)
Plaintiffs,) SECOND AMENDED
) PETITION
v.)
)
DAVID HESPE, COMMISSIONER OF THE NEW)
JERSEY DEPARTMENT OF EDUCATION; the)
NEW JERSEY STATE BOARD OF EDUCATION;)
and the NEW JERSEY DEPARTMENT OF)
EDUCATION)
)
Respondents)

Petitioners Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P., and as Guardian ad Litem for B.A.; Allen Schulman, individually and as Guardian ad Litem for A.S.; and Maximo Galeana, individually and as Guardian ad Litem for I.G.M., and as Guardian ad Litem for Y.G.; by and through their attorney, Arthur H. Lang, Esq., hereby requests the Commissioner of Education to consider a controversy which has arisen between the petitioners and the respondents whose

address is the New Jersey Department of Education, P.O. Box 500, Trenton, NJ 08625-0500, pursuant to the authority of the Commissioner to hear and determine controversies under the school laws (N.J.S.A. 18A:6-9), by reason of the following facts:

1. Petitioner public school students of the Lakewood School District (hereinafter "LSD") are constitutionally entitled, as are all New Jersey public school students, to a "thorough and efficient" education (hereinafter "T&E") pursuant to the education clause of the New Jersey Constitution, which reads as follows:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years. N.J. Const. art. VIII, § 4, ¶ 1 (hereinafter "T&E Clause").

2. The State is ultimately responsible for assuring that the petitioners' constitutional education rights are provided them. The "ultimate responsibility for a thorough and efficient education was imposed upon the State." Robinson v. Cahill, 62 N.J. 473, 508-09 (1973). "The Commissioner and the [State] Board are charged with the responsibility for

achieving the constitutional mandate.” Abbott by Abbott v. Burke, 119 N.J. 287, 349 (1990).

3. The Commissioner and State Board of Education have broad powers and duties to monitor and enforce the State’s education system and to assure that students, including the petitioners, are receiving a T&E education.

4. As the T&E Clause itself and the judicial interpretations by the New Jersey Supreme Court in *Robinson* and *Abbott* and many other decisions make explicit, the Legislature must appropriate the necessary funds.

5. The School Funding Reform Act of 2008, as recently amended (hereinafter “SFRA”), is the legislative vehicle for doing so on a statewide basis and it was found constitutional in *Abbott XX*.

6. SFRA provides for an adequacy budget amount that constitutes the primary metric for determining whether a district’s students have sufficient funding for them to receive a T&E education.

7. Because of the Township of Lakewood’s unique demographic makeup, with almost 85% of its school-age residents attending non-public schools as compared to the statewide average of about 10%, the education afforded the public school students

of LSD is supported by substantially less than SFRA's adequacy budget level of funding.

8. The costs of providing for mandatory transportation and special education services required by Lakewood's approximately 31,000 nonpublic school students come mainly from the LSD budget and consume about 40% of the entire budget.

9. This nondiscretionary diversion of funds from the petitioners and their fellow LSD public school students, totaling about 6,000, to provide the total population of 37,000 school age students with mandatory transportation and with a Free and Appropriate Public Education (hereinafter "FAPE") for the most severely handicapped children pursuant to the United States Constitution and federal law has resulted in available funding for LSD's public schools falling about 40% below SFRA's adequacy budget.

10. T&E cannot rationally be provided under provisions of the SFRA designed for 6,000 children in LSD when in reality the district is mandated to serve a resident population over six times larger. "No amount of administrative skill will redress this deficiency and disparity--and its cause is not mismanagement." 119 N.J. at 391.

11. State monitors have been in LSD for more than four years and have responsibility for assuring that the district's spending is appropriate and efficient.

12. One of the monitors, Michael Azzara, stated at a public meeting of the LSD board of education that the district's problem was a revenue problem rather than a spending problem.

13. The Commissioner of Education and the State Treasurer have formally recognized for each of the past four school years that SFRA funding is inadequate to provide LSD public school students with a T&E education by providing, in dramatically increasing amounts, "advance state aid" or "emergency loans."

14. The statutory basis for such advance state aid is NJSA 18A:7A-56. Under that provision, applicable only to districts with a state monitor, "[t]he commissioner's recommendation shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education." Thus, by recommending advance state aid for four consecutive years, the commissioner is acknowledging that funding generated for LSD by SFRA is insufficient to provide LSD public school students with a T&E education.

15. For the current school year, the amount of this extraordinary advance state aid has risen dramatically to \$28,182,090, bringing the four-year total to \$46,844,951.

16. This annual discretionary advance state aid is insufficient to assure LSD public students a T&E education, however, because:

- a. The satisfaction of the petitioners' constitutional right to a T&E education cannot depend upon periodic discretionary action by the executive branch;
- b. The statute pursuant to which such advance aid is provided states explicitly that "[the] advance state aid payment shall be repaid by the school district through automatic reductions in the State aid provided in subsequent years," apparently without regard to whether or not the school district's financial situation can be expected to improve in subsequent years;
- c. The fiscal situation of LSD will worsen rather than improve over subsequent years because:
 - i. Demographic trends indicate that the nonpublic school student population will grow faster than the public school student population, thereby increasing the drain on the LSD budget for mandatory transportation and special education services for nonpublic or otherwise nonpublic students (opting for FAPE); and

- ii. The recent statutory amendment to SFRA (P.L. 2018, c. 67) has already begun to reduce state aid payments to LSD; and
- iii. The amount of advance state aid to LSD, even the current year's \$28,182,090, has not enabled the district to maintain existing curricular and extra-curricular programs, let alone restore programs provided previously.

17. Due to the uncertain and inadequate stream of funding available to LSD for at least the past four school years, the LSD superintendent has been forced to send out annually increasing numbers of Reduction in Force (RIF) letters to district teachers and to accept increasing numbers of teacher resignations. For example, in 2016-17 she sent out 140 RIF letters and lost 78 teachers to resignations. (T2 23-7 to 12).

18. Replacing the many teachers who have chosen to resign each year due to the fiscal instability and the RIFs has resulted in many educational dislocations and increased LSD costs for such items as professional development (T2 68-16 to 18).

19. As indicated above, the recent amendment to SFRA already has led to a further deterioration of LSD's financial situation. LSD's school aid for 2018-19 was reduced in the FY 2019 Appropriations Act from the previously budgeted school

aid amount of \$25,032,282 to \$23,465,461, a decrease of \$1,566,821.

20. As a consequence, the funds available to LSD for 2018-2019 will fall substantially below the district's statutory adequacy budget level *even before Lakewood's unique circumstances are considered.*

21. The educational problems of LSD's public school students are exacerbated by the fact that 91% are low-income (T2 45-9 to 19), 25% are classified as Limited English Proficiency (T2 40-18 to 19), 86% are Hispanic and 8.1% are African-American. (T2 123-18 to 23).

22. The "measurement of the constitutional requirement must account for the needs of the students. . . ." 119 N.J at 319. The district cannot **thoroughly** remedy educational or systemic deficiencies, nor can it make **efficient** and responsible interventions and programmatic choices, nor can any organization reasonably plan for the future, knowing that its stream of revenue becomes more insufficient with each passing year and that it must rely on even larger loans just to maintain its present levels of curriculum and support. This is particularly troublesome given the vast number of disadvantaged students in LSD. "If the educational fare of the seriously disadvantaged student is the same as the 'regular

education' given to the advantaged student, those serious disadvantages will not be addressed. . . ." 119 N.J. at 374.

23. Not surprisingly given its fiscal plight compounded by its unique demographics, by virtually every input and outcome measure used by the State to evaluate school districts, LSD falls below every comparison group including the lowest DFG grouping.

24. As soon as possible, the State must implement a constitutionally sufficient and permanent solution to LSD's well-documented educational and fiscal problems. Continuing the current insufficient, patchwork and annually discretionary approach will only exacerbate the constitutional violation and make the ultimate cure more costly. It also will consign more and more LSD public school students to the lifetime consequences of having received a constitutionally inadequate public education.

25. To the extent that legislative action is necessary to vindicate the LSD public school students' constitutional rights, as it certainly will be, the commissioner and state board of education have their own constitutional obligations to serve as the advocates for those students. That means they must use their expertise to identify precisely what legislative action is required and they must champion that

cause. Anything less than that would be a “flat disavowal of power despite the compelling circumstances [and] may be sharply contrasted with the sweep of our pertinent constitutional and statutory provisions and the tenor of our earlier judicial holdings.” Jenkins v. Tp. of Morris School Dist. and Bd. of Ed. 58 N.J. 483, 493 (1971).

WHEREFORE, Plaintiffs petition the Commissioner to determine:

- 1) That the SFRA as applied to the Lakewood School District does not provide sufficient funding to enable the school district to deliver the core curriculum content standards and extracurricular and cocurricular activities necessary for a thorough and efficient education.
- 2) That the consequential reliance upon discretionary advance state aid payments pursuant to 18A:7A-56 to provide funding for a thorough and efficient education does not provide T&E funding in any given school year that is certain and predictable.
- 3) That the constitutional imperative regarding a thorough and efficient education requires sufficient funding that is not discretionary.
- 4) That the Commissioner recommends that this matter be remedied by the Legislature.

Respectfully Submitted,

Arthur H. Lang

Arthur H. Lang

Attorney for Petitioners

Dated: September 4, 2018

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Petitioners,

v.

DAVID HESPE, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF EDUCATION; the NEW JERSEY STATE BOARD OF EDUCATION; and the NEW JERSEY DEPARTMENT OF EDUCATION,

Respondents.

OFFICE OF ADMINISTRATIVE LAW
OAL Dkt. No. EDU 11609-14
Agency Reference No. 156-6/14

ADMINISTRATIVE ACTION

ANSWER TO SECOND AMENDED
PETITION

Respondents, Lamont Repollet, Commissioner, State Department of Education,¹ New Jersey State Board of Education, and the New Jersey Department of Education (together "Respondents") by way of Answer to Petitioners' Second Amended Petition state:

¹Dr. Lamont Repollet was sworn in as Commissioner of Education on June 19, 2018.

1. The New Jersey Constitution speaks for itself and requires no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

2. The Supreme Court's decisions in Robinson v. Cahill, 62 N.J. 473 (1973), and Abbott v. Burke, 119 N.J. 287 (1990), speak for themselves and require no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

3. The powers and duties of the Commissioner of Education and the State Board of Education are set forth in New Jersey Statutes and the Administrative Code, which speak for themselves and require no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

4. Respondents admit that state funds distributed to school districts by the New Jersey Department of Education must first be appropriated by the Legislature. The New Jersey Constitution and judicial case law speak for themselves and require no response.

To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

5. Respondents admit that The School Funding Reform Act, N.J.S.A. 18A:7F-43 to -66 ("SFRA"), was found constitutional by the New Jersey Supreme Court. The SFRA speaks for itself and requires no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Any remaining allegations in this paragraph are denied.

6. The SFRA speaks for itself and requires no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Any remaining allegations in this paragraph are denied.

7. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations. Petitioners are left to their proofs.

8. Respondents deny that the Lakewood School District ("LSD") provides mandatory transportation and special education services for 31,000 nonpublic-school students. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

9. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Any remaining allegations in this paragraph are denied.

10. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. The Supreme Court's decision in Abbott v. Burke, 119 N.J. 287 (1990), and the SFRA speak for themselves and require no response. Any remaining allegations in this paragraph are denied.

11. Respondents admit that there has been at least one State monitor in LSD, pursuant to N.J.S.A. 18A:7A-55, since April 25, 2014. The responsibilities of the State monitor are set forth in Title 18A of the New Jersey Statutes, which speaks for itself.

12. Respondents admit that they were provided a video depicting Mr. Azzara making a statement at a public meeting of the LSD Board of Education concerning revenue and spending. That video speaks for itself and requires no response. Any characterizations of or conclusions drawn from that statement are denied.

13. To the extent this paragraph sets forth allegations directed to the State Treasurer, it requires no response. Any remaining allegations in this paragraph are denied.

14. N.J.S.A. 18A:7A-56 speaks for itself and requires no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Any remaining allegations in this paragraph are denied.

15. Respondents admit that the Department of Education recommended that LSD be provided a loan in the amount of \$28,182,090 for the current 2018-2019 school year, and that if LSD borrows that full amount, it will have borrowed a total of \$46,844,951 over the last four school years. Any remaining allegations in this paragraph are denied.

16. Denied:

- a. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response. Any remaining allegations are denied.
- b. N.J.S.A. 18A:7A-56 speaks for itself and requires no response. To the extent this paragraph calls for conclusions and/or characterizations of law, it requires no response.
- c. Respondents are without sufficient knowledge or information to admit or deny the allegations in this paragraph. Petitioners are left to their proofs.
 - i. Respondents are without sufficient knowledge or information to admit or deny the allegations in this paragraph. Petitioners are left to their proofs.
 - ii. Denied.
 - iii. Respondents are without sufficient knowledge or information to admit or deny the

allegations in this paragraph. Petitioners are left to their proofs.

17. The testimony cited speaks for itself and requires no response. Any characterizations or conclusions drawn from the testimony are denied. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

18. The testimony cited speaks for itself and requires no response. Any characterizations of or conclusions drawn from the testimony are denied. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

19. Respondents admit that the Total K-12 Aid for LSD in the 2018-19 Governor's Budget Message was \$25,032,282, and that the Revised Total K-12 Aid for LSD in the 2018-2019 Appropriations Act was \$23,465,461. The difference between the two figures is \$1,566,821. Any characterizations of or conclusions drawn from those figures are denied. Any remaining allegations in this paragraph are denied.

20. The testimony cited speaks for itself and requires no response. Any characterizations of or conclusions drawn from the testimony are denied. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

21. The Supreme Court's decision in Abbott v. Burke, 119 N.J. 287 (1990), speaks for itself and requires no response. To the extent that this paragraph calls for conclusions and/or characterizations of law, it requires no response. Respondents are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph. Petitioners are left to their proofs.

22. Respondents are without sufficient knowledge or information to admit or deny the allegations in this paragraph. Petitioners are left to their proofs.

23. To the extent this paragraph contains allegations directed toward the Legislature, or other third parties, over which Respondents have no control, no response is required. To the extent this paragraph calls for conclusions and/or characterizations of law, no response is required. Any remaining allegations in this paragraph are denied.

24. To the extent this paragraph contains factual allegations directed toward the Legislature, or other third parties, over which Respondents have no control, no response is required. The duties and responsibilities of the State Board and the Commissioner are set forth in New Jersey Statutes and the Administrative Code, which speak for themselves and require no response. The Supreme Court's decision in Jenkins v. Twp. of Morris Sch. Dist., 58 N.J. 483 (1971), speaks for itself and requires no response. To the extent that this paragraph calls for

conclusions and/or characterizations of law, no response is required. Any remaining allegations in this paragraph are denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Respondents are immune from suit.

SECOND AFFIRMATIVE DEFENSE

Petitioners have failed to state a claim upon which relief can be granted against Respondents.

THIRD AFFIRMATIVE DEFENSE

Petitioners have not been denied any right, privilege, or immunity secured by state or federal law.

FOURTH AFFIRMATIVE DEFENSE

Petitioners lack standing to bring the claims contained in the Second Amended Petition.

FIFTH AFFIRMATIVE DEFENSE

All acts of Respondents were performed pursuant to laws, statutes, and regulations and, therefore, are valid as a matter of law.

SIXTH AFFIRMATIVE DEFENSE

Respondents' actions were not arbitrary, capricious, or unreasonable.

SEVENTH AFFIRMATIVE DEFENSE

Petitioners have suffered no injury attributable to any conduct of Respondents.

EIGHTH AFFIRMATIVE DEFENSE

Respondents acted at all times relevant hereto with good faith, without fraud and malice, and in compliance with State and federal law.

NINTH AFFIRMATIVE DEFENSE

Respondents are not obligated to Petitioners in any amount or sum, whatsoever.

TENTH AFFIRMATIVE DEFENSE

Petitioners fail to name indispensable parties.

ELEVENTH AFFIRMATIVE DEFENSE

Petitioners have failed to present a justiciable case or controversy.

TWELFTH AFFIRMATIVE DEFENSE

Respondents were not negligent and violated no duties to Petitioners.

THIRTEENTH AFFIRMATIVE DEFENSE

Any potential injuries suffered by Petitioners are due to the acts or omissions of third persons over whom Respondents have no control.

FOURTEENTH AFFIRMATIVE DEFENSE

All conduct of Respondents was reasonable, proper, and within the scope of their authority.

FIFTEENTH AFFIRMATIVE DEFENSE

All relevant statutes and regulations are consistent with the New Jersey Constitution.

SIXTEENTH AFFIRMATIVE DEFENSE

Respondents assert all relevant statutory defenses and immunities.

RESERVATION OF RIGHTS

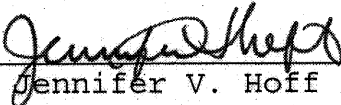
Respondents reserve the right to interpose such other defenses as may be warranted after further investigation and discovery.

Respondents reserve the right, at or before trial, to move to dismiss the Second Amended Petition and/or for summary judgment based on any or all of the above defenses.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:



Jennifer V. Hoff
Deputy Attorney General

Dated: September 18, 2018

C: Arthur H. Lang, Esq.
Daniel Grossman, Esq.
Paul Tractenberg, Esq.
Michael Inzelbuch, Esq.



State of New Jersey

DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

DAVID C. HESPE
Commissioner

June 10, 2015

TO: Andrew P. Sidamon-Eristoff
State Treasurer

FROM: David C. Hespe
Commissioner

A handwritten signature in black ink, appearing to read "DCH", written over the printed name "David C. Hespe".

SUBJECT: State Aid Advance for Lakewood School District Under the *School District Fiscal Accountability Act*

Pursuant to N.J.S.A. 18A:7A-56, I am writing you to recommend the advance of \$4,500,000 in state aid from the School District Deficit Relief account (15-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.

Mr. Michael Azzara has served as state monitor in the Lakewood School District since April 2014, along with Mr. David Shafter and Mrs. Theresa Pollifrone-Sinatra who have been serving as assistant state monitors since September 2014 and February 2015, respectively. They continue to work with the district on the following:

- Meet with administration and Board of Education to develop an understanding of the issues and causes of the deficit situation;
- Review all expenditures of the district;
- Review grant funding and expenditures to ensure funds will be expended prior to the end of the grant period in accordance with the terms of the grant; and
- Review the corrective action plan and audit recommendations for fiscal year 2014-2015.

In addition, as part of the ongoing work as state monitor and assistant state monitors, all purchase orders are being reviewed prior to issuance and they are restricting any unnecessary purchases and reviewing and approving monthly bill lists.

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. In anticipation of this loan, the district is including the first year's repayment of \$450,000 in its 2015-2016 budget. Upon approval and issuance of the advance, this repayment will be effectuated by the Department through automatic deductions in the state

Andrew P. Sidamon-Eristoff

June 10, 2015

Page 2

aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss this further and may determine to impose interest on the unpaid balance in the future pursuant to N.J.S.A. 18A:7A-56(b).

Thank you for your prompt attention to this matter. If you have questions or require additional information, please contact Glenn Forney, director, Office of State Monitors at (609) 943-4115.

DCH/TM/GF/tch

c: William Haldeman
Timothy Matheney
Kevin Dehmer
Yut'se Thomas
Glenn Forney
David Joye
Cindy Lee
Charlene Holzbaaur



State of New Jersey
OFFICE OF THE STATE TREASURER
PO Box 002
TRENTON NJ 08625-0002

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ANDREW P. SIDAMON - ERISTOFF
State Treasurer

June 16, 2015

The Honorable David C. Hespe
Commissioner
Department of Education
100 River View Plaza
P.O. Box 500
Trenton, New Jersey 08625

Dear Commissioner Hespe:

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$4,500,000 from funds available in the School District Deficit Relief account (15-100-034-5120-489) to address Lakewood School District's deficit for the 2014-2015 school year. Please note that this amount is a revision to and supersedes the \$4,000,000 approved in my letter dated May 13, 2015. Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2015-2016 school year.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew P. Sidamon-Eristoff".

Andrew P. Sidamon-Eristoff
State Treasurer

c: Thomas Neff
Patricia Morgan

**State of New Jersey**DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500CHRIS CHRISTIE
GovernorKIM GUADAGNO
Lt. GovernorDAVID C. HESPE
Commissioner

June 23, 2016

TO: Ford M. Scudder
Acting State TreasurerFROM: David C. Hespe
Commissioner

A handwritten signature in black ink, appearing to read "David", written over the printed name "David C. Hespe".

SUBJECT: State Aid Advance for Lakewood School District Under the *School District Fiscal Accountability Act*

Pursuant to N.J.S.A. 18A:7A-56, I am writing you to recommend the advance of \$5,640,183 in state aid from the School District Deficit Relief account (16-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.

The Lakewood School District will have an estimated deficit of \$12,031,986 for the fiscal year ending June 30, 2016. The total deficit includes \$2,952,396 budgetary deficit for the year ending June 30, 2015 and an estimated deficit for the current school year of \$9,079,590. The cause of the current year deficit is an estimated over expenditure of \$7,263,934 in regular transportation and aid in lieu accounts, \$1,402,237 in special education transportation accounts and a \$1,503,412 over expenditure in tuition accounts. This is offset by a \$1,000,000 grant from Lakewood Township for non-mandated transportation not included in the original budget and \$89,993 in excess of budgets in other local revenue lines and extraordinary aid.

The district's total deficit of \$12,031,986 includes an over expenditure of funds for courtesy busing for the current year. The amount requested for the advance of state aid of \$5,640,183 does not include the over expenditure for courtesy busing and will not be used to offset such costs.

Mr. Michael Azzara has served as state monitor in the Lakewood School District since April 2014, along with Mr. David Shafter and Mrs. Theresa Pollifrone-Sinatra who have been serving as assistant state monitors since September 2014 and February 2015, respectively. They continue to work with the district on the following:

- Meet with administration and Board of Education to develop an understanding of the issues and causes of the deficit situation;
- Review all expenditures of the district;

Ford M. Scudder
June 23, 2016
Page 2

- Review grant funding and expenditures to ensure funds will be expended prior to the end of the grant period in accordance with the terms of the grant; and
- Review the corrective action plan and audit recommendations for fiscal year 2014-2015.

In addition, as part of the ongoing work as state monitor and assistant state monitors, all purchase orders are being reviewed prior to issuance and they are restricting any unnecessary purchases and reviewing and approving monthly bill lists.

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. The first repayment installment of \$564,018 will be due in the 2016-2017 school year. Upon approval and issuance of the advance, this repayment will be effectuated by the Department through automatic deductions in the state aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss this further and may determine to impose interest on the unpaid balance in the future pursuant to N.J.S.A. 18A:7A-56(b).

Thank you for your prompt attention to this matter. If you have questions or require additional information, please contact Glenn Forney, executive director, Office of State Monitors at (609) 943-4115.

DCH/KD/GF/tch

c: Patricia Morgan
William Haldeman
Kevin Dehmer
Yut'se Thomas
Glenn Forney
David Joye
Cindy Lee
David Ridolfino

**State of New Jersey**

OFFICE OF THE STATE TREASURER

PO Box 002

TRENTON, NJ 08625-0002

CHRIS CHRISTIE
*Governor*KIM GUADAGNO
*Lt. Governor*FORD M. SCUDDER
Acting State Treasurer

TO: David C. Hespe, Commissioner
Department of Education

FROM: Ford M. Scudder
Acting State Treasurer *FMS*

DATE: June 27, 2016

SUBJECT: State Aid Advance for Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$5,640,183 from funds available in the School District Deficit Relief account (16-100-034-5120-489) to address Lakewood School District's deficit for the 2015-2016 school year. Please note that Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2016-2017 school year.

C. David Ridolfino
Mary Byrne
Hannah Good
Glenn Forney



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Commissioner

November 9, 2017

TO: Ford M. Scudder
State Treasurer

FROM: Kimberley Harrington
Commissioner

A handwritten signature in black ink that reads "Kimberley Harrington".

SUBJECT: State Aid Advance for Lakewood School District under the School District Fiscal Accountability Act

Pursuant to *N.J.S.A. 18A:7A-56*, I am writing you to recommend the advance of \$8,522,678 in state aid from the School District Deficit Relief account (18-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.

The Lakewood School District will have an estimated deficit of \$12,031,986 for the fiscal year ending June 30, 2018. The amount requested for the advance of state aid of \$8,522,678 is needed to allow the district to meet the needs of its students and provide a thorough and efficient education.

Mr. David Shafter has served as assistant state monitor in the Lakewood School District since September 2016 and as state monitor since September 2017, along with Mr. Michael Azzara. The state monitors continue to work with the district in helping the administration and Board of Education develop an understanding of the issues and causes of the deficit situation. They also review all expenditures of the district and review grant funding and expenditures to ensure funds will be expended prior to the end of the grant period in accordance with the terms of the grant in addition to reviewing the corrective action plan and audit recommendations for the prior fiscal year.

As part of the ongoing work as state monitors, all purchase orders are being reviewed prior to issuance and they are restricting any unnecessary purchases and reviewing and approving monthly bill lists.

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. The first repayment installment of \$852,267.80 will be due in the 2018-2019 school year. Upon approval and issuance of the advance, this repayment will be

Ford M. Scudder
Page 2
November 9, 2017

effectuated by the Department through automatic deductions in the state aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss this further and may determine to impose interest on the unpaid balance in the future pursuant to *N.J.S.A. 18A:7A-56(b)*.

Thank you for your prompt attention to this matter. If you have questions or require additional information, please contact Glenn Forney, executive director, Office of State Monitors at (609) 376-3954.

KH/KD/GF/tch
c: Chris Huber
Kevin Dehmer
Yul'se Thomas
Glenn Forney
Amanda Schultz
Cindy Lee
David Ridolfino



State of New Jersey
OFFICE OF THE STATE TREASURER
PO Box 002
TRENTON, NJ 08625-0002

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer

TO: Kimberley Harrington, Commissioner
Department of Education

FROM: Ford M. Scudder
State Treasurer

DATE: November 22, 2017

SUBJECT: State Aid Advance for Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$8,522,678 from funds available in the School District Deficit Relief account (18-100-034-5120-489) to address Lakewood School District's deficit for the 2017-2018 school year. Please note that Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2018-2019 school year.

- c: David Ridolfino
- Brian Francz
- Lynn Azarchi
- Hannah Good
- Alexander Sitts
- Glenn Forney



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, ED.D.
Commissioner

November 2, 2018

TO: Elizabeth Maher-Muoio
State Treasurer

FROM: Lamont O. Repollet
Commissioner

SUBJECT: State Aid Advance for Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to N.J.S.A. 18A:7A-56, I am writing you to recommend the advance of \$28,182,090 in state aid from the School District Deficit Relief account (19-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.

The Lakewood School District will have an estimated deficit of \$28,182,090 for the fiscal year ending June 30, 2019. The amount requested for the advance of state aid of \$28,182,090 is needed to allow the district to meet the needs of its students and provide a thorough and efficient education.

Mr. David Shafter has served as state monitor since September 2017. The state monitor continues to work with the district in helping the administration and Board of Education develop an understanding of the issues and causes of the deficit situation. He also reviews all expenditures of the district and reviews grant funding and expenditures to ensure funds will be expended prior to the end of the grant period in accordance with the terms of the grant in addition to reviewing the corrective action plan and audit recommendations for the prior fiscal year.

As part of his ongoing work as state monitor, all purchase orders are being reviewed prior to issuance and he is restricting any unnecessary purchases and reviewing and approving monthly bill lists.

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. The first repayment installment of \$2,818,209 will be due in the 2019-2020 school year. Upon approval and issuance of the advance, this repayment will be effectuated by the Department through automatic deductions in the state aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss

Elizabeth Maher-Muoio

Page 2

November 2, 2018

this further and may determine to impose interest on the unpaid balance in the future pursuant to *N.J.S.A. 18A:7A-56(b)*.

Thank you for your prompt attention to this matter. If you have questions or require additional information, please contact Glenn Forney, deputy assistant commissioner, Division of Finance at (609) 376-3941.

LOP/KD/GF/tch

c: Kelli LeDet
Chris Huber
Kevin Dehmer
Glenn Forney
Amanda Schultz
Cindy Lee
David Ridolfino

**State of New Jersey**


OFFICE OF THE STATE TREASURER

PO BOX 002

TRENTON, NJ 08625-0002

PHILIP D. MURPHY
*Governor*SHEILA Y. OLIVER
*Lt. Governor*ELIZABETH MAHER MUOIO
State Treasurer

TO: Honorable Lamont Repollet
Department of Education

FROM: Elizabeth M. Muoio 
State Treasurer

DATE: November 21, 2018

SUBJECT: State Aid Advance for the Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$28,182,090 from funds available in the School District Deficit Relief account (19-100-034-5120-489) to address the Lakewood School District's deficit for the 2018-2019 school year. Please note that Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2019-2020 school year.

c: David Ridolfino
Lynn Azarchi
Hannah Good
Alexander Sitts
Chiara Nodari
Glenn Forney



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, ED.D.
Commissioner

October 26, 2018

Ms. Laura Winters, Superintendent
Lakewood Township School District
200 Ramsey Avenue
Lakewood, NJ 08701

Dear Ms. Winters,

Pursuant to language included in P.L.2018, c.54, the department has conducted a needs assessment based on the Lakewood Township School District's Application for 2018-2019 Emergency Aid (Application) in the amount of \$1,566,821. Although the primary source of information was the application submitted by the district, fiscal information necessary for a thorough review was obtained by the Department from the district's fiscal year end June 30, 2017, Comprehensive Annual Financial Report (CAFR) and from the district's 2018-2019 original budget certified for taxes.

Your Board of Education adopted a plan to address the district's reduction in state aid in the amount of \$1,566,821 by removing salary increases as well as reducing other line items within the budget.

The district's reduction in state aid is a result of language in the FY19 budget identifying districts that, although underfunded for FY18, were set to receive more than full funding for FY19. According to this language provision, these districts were instead to receive the amount determined in the school funding formula without the phase-in provided to other overfunded districts. However, because the district's request for and Department's approval of a loan in the amount of \$28,182,090 for the 2018-2019 school year was predicated on the 2018-2019 state aid amount as set forth in the Governor's Budget Message, the Department has determined to approve the district's request for emergency aid in the amount of \$1,566,821.

The department recognizes the fiscal challenges faced by the district as presented in the district's Application. In addition to your continued coordination with the state monitor, the county office is available to assist with the implementation of a plan to address the various program and fiscal issues that the district is facing this year as well as in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Repollet", written over a circular stamp.

Lamont O. Repollet, Ed.D.
Commissioner

c: Kellie LeDet
Kevin Dehmer
Glenn Forney
Executive County Superintendent
Executive County Business Official



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, ED.D.
Commissioner

July 1, 2019

TO: Elizabeth Maher-Muoio
State Treasurer

FROM: Lamont O. Repollet
Commissioner

A handwritten signature in blue ink, appearing to read "L. Repollet", written over a circular stamp or seal.

SUBJECT: State Aid Advance for Lakewood School District Under the *School District Fiscal Accountability Act*

Pursuant to N.J.S.A. 18A:7A-56, I am writing you to recommend the advance of \$36,033,862 in state aid from the School District Deficit Relief account (20-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.

The Lakewood School District will have an estimated deficit of \$36,033,862 for the fiscal year ending June 30, 2020. Of the total amount requested, \$30,050,890 represents projected State aid set forth in the Governor's Budget Message for FY20 that was not adopted in the FY20 Appropriations Act and the balance are for other necessary payments due to the state. 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.

Mr. David Shafter has served as assistant state monitor in the Lakewood School District since September 2016 and as state monitor since September 2017. The state monitor continues to work with the district in helping the administration and Board of Education develop an understanding of the issues and causes of the deficit situation.

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. The first repayment installment of \$3,603,386.20 will be due in the 2020-2021 school year. Upon approval and issuance of the advance, this repayment will be effectuated by the Department through automatic deductions in the state aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss this further and may determine to impose interest on the unpaid balance in the future pursuant to N.J.S.A. 18A:7A-56(b).

Thank you for your prompt attention to this matter. If you have questions or require additional information, please contact Glenn Forney, Deputy Assistant Commissioner, Division of Finance, at (609) 376-3941.

c: Kellie LeDet
Kevin Dehmer
Glenn Forney
Cindy Lee
Kevin Ahearn
Charles Muller
Hannah Good



State of New Jersey

OFFICE OF THE STATE TREASURER

PO Box 002


TRENTON, NJ 08625-0002

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

TO: Lamont Repollet, Commissioner
Department of Education

FROM: Elizabeth M. Muoio 
State Treasurer

DATE: July 1, 2019

SUBJECT: State Aid Advance for the Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$36,033,862 from funds available in the School District Deficit Relief account (20-100-034-5120-489) to address the Lakewood School District's deficit for the 2019-2020 school year. Please note that Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2020-2021 school year.

c: David Ridolfino
Lynn Azarchi
Hannah Good
Alexander Sitts
Chiara Nodari
Glenn Forney

Elizabeth Maher-Muoio

Page 2

March 17, 2021

Due to the amount of the advance and its impact on local taxpayers, I recommend a ten-year term for repayment. In anticipation of this loan, the district is including the first year's repayment of \$5,454,171.10 in its 2021-2022 budget. Upon approval and issuance of the advance, this repayment will be effectuated by the Department through automatic deductions in the state aid provided to the school district. At this time, there is no recommendation for the assessment of interest. We can discuss this further and may determine to impose interest on the unpaid balance in the future pursuant to N.J.S.A. 18A:7A-56(b). Thank you for your prompt attention to this matter.

If you have questions or require additional information, please contact Glenn Forney, Deputy Assistant Commissioner, Division of Finance, at (609) 954-2024.

AAM/KD/GF/tch

c: Hanifa Barnes
Kevin Dehmer
Glenn Forney
Allen Dupree
Charles Muller
Chiara Nodari



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500


PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

March 17, 2021

TO: Elizabeth Maher-Muoio
State Treasurer

FROM: Angelica Allen-McMillan, Ed.D. 
Acting Commissioner

SUBJECT: State Aid Advance for Lakewood School District Under the *School District Fiscal Accountability Act*

Pursuant to N.J.S.A. 18A:7A-56, I am writing you to recommend the advance of \$54,541,711.00 in state aid from the School District Deficit Relief account (21-100-034-5120-489) to the Lakewood School District. The Department finds that this advance payment is necessary to ensure the provision of a thorough and efficient education.


Mr. David Shafter has served as state monitor in the Lakewood School District since October 2014, and continues to work with the district on the following:

- Meet with administration and Board of Education to develop an understanding of the issue and cause of the deficit situation;
- Review all expenditures of the district including out-of-district placements;
- Review grant funding and expenditures to ensure funds will be expended prior to the end of the grant period in accordance with the terms of the grant; and,
- Review the corrective action plan and audit recommendations for fiscal year 2020-2021.

In addition, as part of the ongoing work as state monitor, Mr. Shafter is reviewing all purchase orders prior to issuance and restricting any unnecessary purchases and reviewing and approving monthly bill lists.

**State of New Jersey**DEPARTMENT OF THE TREASURY
PO Box 002
TRENTON, NEW JERSEY 08625PHILIP D. MURPHY
*Governor*ELIZABETH MAHER MUOIO
*State Treasurer*SHEILA Y. OLIVER
Lt. Governor

TO: Angelica Allen-McMillan, Ed.D., Acting Commissioner
Department of Education

FROM: Elizabeth Maher Muoio 
State Treasurer

DATE: March 18, 2021

SUBJECT: State Aid Advance for the Lakewood School District under the *School District Fiscal Accountability Act*

Pursuant to the provisions of N.J.S.A.18A:7A-56 which allows the State to provide a loan to a school district faced with a fiscal crisis, you are hereby directed to advance the sum of \$54,541,711.00 from funds available in the School District Deficit Relief account (21-100-034-5120-489) to address the Lakewood School District's deficit for the 2020-2021 school year. Please note that Lakewood is considered eligible for funding pursuant to the provisions of N.J.S.A.18A:7A-55 and as such may be approved for an advance in State aid to be repaid with a term of repayment not to exceed 10 years.

This payment shall be considered a loan according to the provisions of the law as specified above. Your request for a 10-year term of repayment has been approved, with repayment to be made through automatic deductions to the State aid provided to the school district, beginning in the 2021-2022 school year.

c: Lynn Azarchi
Tariq Shabazz
Hannah Good
Alexander Sitts
Chiara Nodari
Glenn Forney