



**METHFESSEL & WERBEL**  
A Professional Corporation

JOEL N. WERBEL>  
JOHN METHFESSEL, JR.>  
ED THORNTON\*>  
FREDRIC PAUL GALLIN\*+^  
STEPHEN R. KATZMAN#  
WILLIAM S.BLOOM>\*  
ERIC L. HARRISON\*+  
MATTHEW A. WERBEL>  
MARC DEMBLING\*+>

Of Counsel  
JOHN METHFESSEL, SR.>  
DONALD L. CROWLEY\*+>

Counsel  
LORI BROWN STERNBACK\*+>  
PAUL J. ENDLER JR.>  
I. BLAKELEY JOHNSTONE,III\*+>  
GERALD KAPLAN>  
JARED P. KINGSLEY\*+>  
JOHN R. KNODEL\*+>  
CHARLES T. MCCOOK, JR. \*+>  
MARC G. MUCCILO>  
RICHARD A. NELKE->  
STEVEN K. PARNES+>  
GINA M. STANZIALE>

Associates  
KEGAN S. ANDESKIE>  
JANICE V. ARELLANO+>  
CHRISTIAN R. BAILLIE+>  
KURT N. CAMPANILE+>  
ELIZABETH C. CONNELLY+>  
EDWARD D DEMBLING>  
MICHAEL R. EATROFF>  
JACQUELINE C. FALCONE+>  
JAMES FOXEN^>  
JENNIFER M. HERRMANN^=>  
RICHARD J. ISOLDE+>  
MAURICE JEFFERSON>  
FRANK J. KEENAN+^>  
LESLIE A. KOCH+>  
ALLISON M. KOENKE>  
EMILY H. KORNFELD>

Associates, Cont'd  
VIVIAN LEKKAS+>  
CAITLIN LUNDQUIST>  
ASHLEE C. MURPH+>  
DIAA J. MUSLEH+>  
RAINA M. PITTS^>  
MATTHEW L. RACHMIEL>  
WILLIAM J. RADA+>  
CHRISTEN L. RAFUSE^>  
NABILA SAEED^>  
AMANDA J. SAWYER^>  
JARED S. SCHURE>  
BORIS SHAPIRO>  
DANIELLE N. SINGER+>  
MARK A. SPEED>  
LEVI E. UPDYKE+^>

\* Certified by the Supreme Court of New Jersey as a Civil Trial Attorney  
+Member of NY & NJ Bar  
^Member of PA & NJ Bar  
>Member of NJ Bar only  
#Member of PA Bar only  
#Member of NJ & LA. Bar  
<Member of NJ & DC Bar  
-Member of NY, NJ & DC Bar  
=Member of FL Bar

Please reply to New Jersey

October 4, 2016

VIA LAWYERS SERVICE

Honorable Solomon Metzger, A.L.J.  
Office of Administrative Law  
9 Quakerbridge Plaza  
Trenton, NJ 08625-0500

RE: **LEONOR ALCANTARA VS. DAVID HESPE, COMMISSIONER OF EDUCATION, ET AL**

Our File No. : 83274 ELH  
OAL Docket No. : EDU 11069-2014 S  
Agency Ref. No. : 156-6/14

Dear Judge Metzger:

This office represents the Lakewood Board of Education. Enclosed please find a motion for permission to participate.

Respectfully submitted,

**METHFESSEL & WERBEL, ESQS.**

Eric L. Harrison  
harrison@methwerb.com  
Ext. 138

ELH:cal/adl/Encl.  
Motion for permission to participate

Methfessel & Werbel, Esqs.  
Our File No. 83274 ELH  
Page 2

cc: VIA EMAIL: lakewoodlaw@thejnet.com  
Arthur H. Lang, Esq.  
918 East Kennedy Boulevard  
Lakewood, NJ 08701

VIA LAWYERS SERVICE  
Geoffrey N. Stark, DAG  
Division of Law  
Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

VIA EMAIL: Paulltractenberg@gmail.com  
Paul L. Tractenberg, Esq.  
123 Washington Street  
Newark, NJ 07102

VIA EMAIL: MHZ@spsk.com  
Marc H. Zitomer, Esq.  
Schenck, Price, Smith & King, LLP  
220 Park Avenue  
PO Box 991  
Florham Park, NJ 07932

Eric L. Harrison - ID #033381993  
METHFESSEL & WERBEL, ESQS.  
2025 Lincoln Highway, Suite 200  
PO Box 3012  
Edison, New Jersey 08818  
(732) 248-4200  
1(732) 248-2355  
harrison@methwerb.com  
Attorneys for Lakewood Board of Education  
Our File No. 83274 ELH

LEONOR ALCANTARA, ET AL

Petitioners,

V.

DAVID HESPE, COMMISSIONER OF  
EDUCATION, ET AL

Respondents.

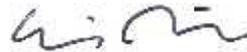
STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO.: EDU 11069-2014S  
AGENCY REF. NO.: 156-6/14

**NOTICE OF MOTION  
FOR PERMISSION TO PARTICIPATE**

**PLEASE TAKE NOTICE** that the undersigned will apply to the Office of Administrative Law, 1601 Atlantic Avenue, Suite 601, Atlantic City, NJ 08401, for an Order granting permission to participate to the Lakewood Board of Education pursuant to N.J.A.C. 1:1-16.6.

Pursuant to R. 1:6-2(d), the undersigned requests oral argument only if opposition to the within motion is entered.

**METHFESSEL & WERBEL, ESQS.**  
Attorneys for Lakewood Board of  
Education



By: \_\_\_\_\_

Eric L. Harrison

DATED: October 4, 2016

A proposed form of Order is annexed hereto.

Eric L. Harrison - ID #033381993  
METHFESSEL & WERBEL, ESQS.  
2025 Lincoln Highway, Suite 200  
PO Box 3012  
Edison, New Jersey 08818  
(732) 248-4200  
1(732) 248-2355  
harrison@methwerb.com  
Attorneys for Lakewood Board of Education  
Our File No. 83274 ELH

LEONOR ALCANTARA, ET AL

Petitioners,

V.

DAVID HESPE, COMMISSIONER OF  
EDUCATION, ET AL

Respondents.

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO.: EDU 11069-2014S  
AGENCY REF. NO.: 156-6/14

**CERTIFICATION**

I, Eric L. Harrison, of full age, duly certify as follows:

1. I am an attorney at law in the State of New Jersey, a partner with the law firm of Methfessel & Werbel, attorneys for the Lakewood Board of Education (“Board”), and in such capacity I am fully familiar with the facts of the within matter.

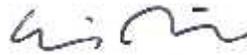
2. The attachments annexed to the Board’s Motion for Permission to Participate are true, accurate, and authentic.

3. Attached hereto as **Exhibit A** is a copy of the amended petition, filed with the Commissioner of Education on behalf of Petitioner Leonor Alcantara on or about June 16, 2014, excluding the exhibits enclosed with the amended petition due to their length.

4. Attached hereto as **Exhibit B** is a copy of the Order of the Honorable John S. Kennedy, A.L.J., dated March 11, 2015, granting the Motion to Participate filed by Paul Tractenberg, Esq.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by law.

**METHFESSEL & WERBEL, ESQS.**  
Attorneys for Lakewood Board of  
Education



By: \_\_\_\_\_  
Eric L. Harrison

DATED: October 4, 2016

LEONOR ALCANTARA, ET AL

Petitioners,

V.

DAVID HESPE, COMMISSIONER OF  
EDUCATION, ET AL

Respondents.

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO.: EDU 11069-2014S  
AGENCY REF. NO.: 156-6/14

---

**LAKWOOD BOARD OF EDUCATION'S BRIEF  
IN SUPPORT OF MOTION FOR PERMISSION TO PARTICIPATE**

---

**METHFESSEL & WERBEL, ESQS.**

2025 Lincoln Highway, Suite 200

PO Box 3012

Edison, New Jersey 08818

(732) 248-4200

1(732) 248-2355

[harrison@methwerb.com](mailto:harrison@methwerb.com)

Attorneys for Lakewood Board of  
Education

Our File No. 83274 ELH

**TABLE OF CONTENTS**

Factual Background and Procedural History . . . . . 1

Legal Argument . . . . . 6

PERMISSION TO PARTICIPATE SHOULD BE GRANTED AS THE  
INTEREST OF THE LAKEWOOD BOARD OF EDUCATION IS LIKELY  
TO ADD CONSTRUCTIVELY TO THE CASE WITHOUT CAUSING  
UNDUE DELAY OR CONFUSION . . . . . 6

Conclusion . . . . . 9

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Petitioners Leonor Alcantara, Leslie Johnson, Juana Perez, Tatiana Escobar, and Ira Schulman, individually and on behalf of minor children who reside within the geographic area served by the Lakewood Board of Education filed an Amended Petition with the Commissioner of Education on or about June 16, 2016, asserting a controversy arising under the School Funding Reform Act (“SFRA”) and other school laws and seeking the following relief:

- (1) An order requiring the Commissioner to recommend that the governor create “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,” and that “the legislature provide for an adjustment 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” (See Amended Petition, attached hereto as **Exhibit A** without exhibits, at Count I, p. 8-9);
- (2) A declaratory ruling finding that and an order requiring the Commissioner “to recommend to the legislature that the state aid growth limitation is inapplicable to any and all possible remedies,” (*id.* at Count I, p. 9);
- (3) A “declaratory ruling that Lakewood is inadequately funded,” and an order requiring the Commissioner “to provide any and all administrative remedies,” and to recommend that the legislature “correct the SFRA as applied to Lakewood” and fully finance “the rehabilitation of Lakewood schools or the building of new facilities” (*id.* at Count II, p. 13-14);
- (4) A “declaratory ruling that Lakewood is and ought to be designated an urban district with special needs as great or greater than the urban districts that are entitled to full SFRA funding,” and an order providing “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” (*id.* at Count III, p. 19-20);

- (5) An order requiring “the Commissioner to retroactively classify Lakewood as a DFG A urban district,” and a “declaratory ruling that Lakewood was otherwise eligible for ‘education opportunity aid or preschool expansion aid in the 2007-2008 school year,’” (id. at Count IV, p. 22-23);
- (6) An order requiring the Commissioner to use administrative remedies and make “recommendations to the legislature that will qualify Lakewood for 100% facility financing under the School Development Authority pursuant to N.J.S.A. 18A:7G-3 and that going forward, qualify Lakewood to receive the same full preschool expansion aid as the other urban districts” (id.);
- (7) A “declaratory ruling that the SFRA census count is unconstitutional as applied to Lakewood” and “the provision of \$3,000,000 in extraordinary aid to the Board is inadequate” (id. at Count V, p. 27);
- (8) An order requiring the Commissioner to implement “administrative remedies for the state to absorb more of the cost,” “recommend to the legislature the provision of full extraordinary aid under the SFRA for Lakewood,” and granting additional special education categorical aid pursuant to N.J.S.A. 18A:7F-55(g) (id.);
- (9) An order requiring the Commissioner “to remedy the drain of extraordinary tuition costs” 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) (id. at Count V, p. 28);
- (10) An order to fund the Board “with its full \$9,027,679 of transportation aid under the SFRA” and/or requiring the Commissioner “to recommend to the governor and legislature the creation of new categorical aid” to support the Board’s transportation costs (id. at Count VI, p. 30); and
- (11) 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 an order “foreclos[ing] the possibility of a remedy that disparately impacts the children of Lakewood or forces them to forego their rights and privileges under the current law.” (id. at Count VII, p. 32).

Petitioners filed their Amended Petition against David Hesper, Commissioner of the New Jersey Department of Education, the New Jersey State Board of Education, and the New Jersey Department of Education, on behalf of the individual Petitioners themselves as well as the minor children identified in its caption. The Amended Petition was not filed on behalf of or with the involvement of the Lakewood Board of Education (“Board” or “Lakewood”). Thereafter, the Amended Petition was transmitted from the Department of Education to the Office of Administrative Law and assigned to the Honorable John S. Kennedy, A.L.J., for a hearing.

In lieu of an answer, Respondents moved to dismiss the Amended Petition, and the Court scheduled oral argument on the motion for January 15, 2015. However, on January 14, 2015, Paul Tractenberg, Esq., moved for leave to participate pursuant to N.J.A.C. 1:1-16.6. The parties filed briefs in support and in opposition, and the record closed with regard to the motion for leave to participate on February 9, 2015. (See Order Granting Motion to Participate dated March 11, 2015, attached hereto as **Exhibit B**, at 2).

On March 11, 2015, Judge Kennedy issued an Order granting Mr. Tractenberg’s motion to participate based upon a finding that his participation would assist the Court and the parties in navigating the complex and important issues involved in this matter, which relate to strong public interests. Id. at 4. In making this factual finding, the

Court observed that Mr. Tractenberg has concentrated his legal, academic, and overall professional career upon advancing the educational interests of public school students in New Jersey, and was directly involved in the litigation of two of the landmark cases regarding school funding and education reform in the State, Robinson v. Cahill, 118 N.J. Super. 223 (Law Div. 1972), and Abbott v. Burke, 100 N.J. 269 (1985). As a faculty member at Rutgers Law School – Newark since 1970 and the founder of the Institute on Education Law and Policy at Rutgers University in Newark, Mr. Tractenberg asserted that his experience and expertise would assist in the administrative adjudication in this case. (See **Exhibit B**, at 2-3).

Having considered those facts as required under the standard for motions for leave to participate pursuant to N.J.A.C. 1:1-16.6, Judge Kennedy concluded that Mr. Tractenberg had demonstrated a significant interest in the outcome of the Amended Petition, and his participation would likely add constructively to this matter and assist the parties in appropriately understanding the complexities of the litigation. The Administrative Law Judge further determined that Mr. Tractenberg’s direct involvement in the two leading cases challenging school funding, as well as the experience and historical perspective produced by that involvement, would serve to benefit the tribunal. Id. at 3.

Therefore, Judge Kennedy’s Order dated March 11, 2015 granted the motion for leave to participate and permitted Mr. Tractenberg “to

participate in all levels of this case including oral argument, filing statements or briefs and the right to file exceptions to the initial decision with the agency head.” Id. at 4. Accordingly, the Court has already allowed the participation of a third party in this matter, in addition to Petitioners and Respondents, based upon a showing that Mr. Tractenberg has a significant interest in the outcome of the legal challenges presented by the Amended Petition and that his interest will most likely provide constructive input in this case and will not lead to any confusion or undue delay.

Because Lakewood unquestionably can demonstrate a highly compelling interest in the outcome of this matter, which could result in important and dramatic changes to the nature and extent of funding it receives under the SFRA, and its interest will add constructively to the case without causing undue delay or confusion, Lakewood now moves to participate pursuant to N.J.A.C. 1:1-16.6(b).

## **LEGAL ARGUMENT**

### **I. PERMISSION TO PARTICIPATE SHOULD BE GRANTED AS THE INTEREST OF THE LAKEWOOD BOARD OF EDUCATION IS LIKELY TO ADD CONSTRUCTIVELY TO THE CASE WITHOUT CAUSING UNDUE DELAY OR CONFUSION.**

Pursuant to the Uniform Administrative Procedure Rules, “any person or entity with a significant interest in the outcome of a case” venued in the Office of Administrative Law may move for permission to participate. N.J.A.C. 1:1-16.6(a). Although the phrase “significant interest” as used in subsection (a) of N.J.A.C. 1:1-16.6 has not been explicitly defined by any appellate court, the term “interest” alone requires that the movant must demonstrate some cognizable stake in the claim being asserted. See Canal Street Pub v. City of Paterson, 6 N.J.A.R. 221 (1982). The Rules further provide in N.J.A.C. 1:1-16.6(b) that a motion to participate “may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. 1:1-16.2.”

In deciding whether to grant the motion, the Administrative Law Judge must “consider whether a participant’s interest is likely to add constructively to the case without causing undue delay or confusion.” N.J.A.C. 1:1-16.6(b). Additionally, the judge must “determine the nature of extent of participation” to be granted, which is limited to: (1) the right to argue orally; (2) the right to file a statement or brief; (3) the right to file exceptions to the initial decision with the agency head; or (4) all of the above. N.J.A.C. 1:1-16.6(c).

In this case, Lakewood's motion for permission to participate should be granted because it can easily establish that it has not merely a "significant interest," as required under N.J.A.C. 1:1-16.6(a), but a highly compelling interest in the outcome of this case. A review of Counts One through Seven of the Amended Petition reveals that each of the Petitioners' factual and legal allegations are directly related to the educational and financial interests of the Lakewood Board of Education and School District. Similarly, there is no question that each demand for relief set forth in the Amended Petition, if granted, would immediately impact Lakewood and the nature and extent of funding it is entitled to receive under the SFRA. (See **Exhibit A**, p. 8-32).

Moreover, Lakewood's interest will undoubtedly add constructively to this matter and will not cause any confusion or undue delay. In the event that Lakewood is permitted to participate, it will contribute constructive input to the litigation through each of the means of participation described in N.J.A.C. 1:1-16.6(c). Specifically, the briefs and/or statements that Lakewood intends to file if permitted to participate, as well as the oral argument it intends to present, will provide valuable assistance by informing the Court with respect to its position on the factual allegations and legal claims raised in the Amended Petition. Lakewood's perspective will also assist the tribunal to the extent that it may seek to file exceptions with the agency head in response to the initial decision.

The participation of Lakewood in this case will not produce any undue delay or confusion whatsoever. Lakewood does not seek the tribunal's permission to file its own separate pleadings, conduct discovery, present or cross-examine witnesses, or participate in the litigation process in any way not authorized by N.J.A.C. 1:1-16.6(c), nor extensions of any deadlines or hearing dates already set by Rule or by Order, and therefore its participation will not result in any delay of the administrative proceedings.

With regard to the potential for confusion, Lakewood's participation will not only avoid any confusion, but will have the opposite effect in this case, given that it is the school district and board of education in possession of a highly unique perspective and information that will be directly relevant and critical to a complete and proper understanding of the facts and causes of action raised in the Amended Petition. As such, Lakewood should be permitted to participate since its involvement will only serve to benefit and assist the tribunal in achieving an appropriate resolution of the issues in dispute.

In summary, Lakewood has a highly compelling interest in the outcome of this matter, which could result in important, comprehensive, and extreme changes to the nature and extent of funding to which it is entitled under the SFRA, and its interest will add constructively to the case without causing undue delay or confusion. Accordingly, its motion to participate should be granted pursuant to N.J.A.C. 1:1-16.6(b).

**CONCLUSION**

Based on the foregoing, it is respectfully requested that Respondent Lakewood Board of Education's Motion for Permission to Participate be granted pursuant to N.J.A.C. 1:1-16.6.

Respectfully submitted,

**METHFESSEL & WERBEL, ESQS.**  
Attorneys for Lakewood Board of  
Education



By: \_\_\_\_\_  
Eric L. Harrison

DATED: October 4, 2016



Eric L. Harrison - ID #033381993  
METHFESSEL & WERBEL, ESQS.  
2025 Lincoln Highway, Suite 200  
PO Box 3012  
Edison, New Jersey 08818  
(732) 248-4200  
1(732) 248-2355  
harrison@methwerb.com  
Attorneys for Lakewood Board of Education  
Our File No. 83274 ELH

LEONOR ALCANTARA, ET AL

Petitioners,

V.

DAVID HESPE, COMMISSIONER OF  
EDUCATION, ET AL

Respondents.

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO.: EDU 11069-2014S  
AGENCY REF. NO.: 156-6/14

**ORDER GRANTING  
PERMISSION TO PARTICIPATE**

**THIS MATTER** having been brought before the Court on the Motion of Methfessel & Werbel, attorneys for Lakewood Board of Education, for an Order granting permission to participate, and the Court having considered the matter and for good cause shown;

**IT IS** on this            day of            2016;

**ORDERED** that the Lakewood Board of Education be and is hereby permitted to participate in this matter; and it is further

**ORDERED** that a copy of this Order be served on all counsel within            days of the date hereof.

\_\_\_\_\_  
A.L.J.

# EXHIBIT A

**CERTIFICATE OF MAILING**

The undersigned hereby certifies as follows:

1. I am employed by the law firm of Methfessel & Werbel.
2. On October 4, 2016 the undersigned prepared and forwarded copies of the within correspondence to the following parties:

VIA LAWYERS SERVICE

Honorable Solomon Metzger, A.L.J.  
Office of Administrative Law  
9 Quakerbridge Plaza  
Trenton, NJ 08625-0500

VIA EMAIL: lakewoodlaw@thejnet.com

Arthur H. Lang, Esq.  
918 East Kennedy Boulevard  
Lakewood, NJ 08701

VIA LAWYERS SERVICE

Geoffrey N. Stark, DAG  
Division of Law  
Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08611

VIA EMAIL: Paulltractenberg@gmail.com

Paul L. Tractenberg, Esq.  
123 Washington Street  
Newark, NJ 07102

VIA EMAIL: MHZ@spsk.com

Marc H. Zitomer, Esq.  
Schenck, Price, Smith & King, LLP  
220 Park Avenue  
Florham Park, NJ 07932

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

---

Alexandra LeFante, Paralegal

ARTHUR H. LANG  
918 East Kennedy Blvd.  
Lakewood, NJ 08701  
(732) 609-5530  
lakewoodlaw@gmail.com  
Attorney for Plaintiffs

----- )  
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

-----  
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.<sup>1</sup> 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 percent. The Board of Education has run deficits year after year for the

---

<sup>1</sup> "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).

last two decades in an effort to balance the fiscal strain on a 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 the size of its public school population and growing. The \$15 million in state equalization that Lakewood has received for two decades does not fill the drain on its resources. 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 decimation of the Lakewood education program and faculty since 1991 during which time the Commissioner still had the discretion to designate districts as special needs. The Department refused relief claiming that Lakewood had real property wealth and that was irresponsibly appropriating this 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 non-public children* that the tax base must support and provide for with almost \$40 million in services. By not counting five-sixth of the student population, Lakewood is falsely deemed wealthy, its district is labeled as "above denied 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 has increased 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 in four years. (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 the SFRA calculation of adequacy is not expected to increase significantly. 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 the teaching force.

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 of a board of education to levy additional taxation. (Exhibit 6).

7) The SFRA adequacy budget for Lakewood public schools, pursuant to *N.J.S.A. 18A:7F-51*, is \$88,338,309. (Exhibit 5). Lakewood's schools are funded "above adequacy" because the sum of the 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. However, if we subtract \$40,184,235 spent on the transportation and extraordinary special education costs of all 30,500 children, the SFRA adequacy budget is left with only \$59,772,636 for the public schools. It is clear that Lakewood is *significantly below adequacy*.

8) Adequacy is defined differently under *NJSA 18A:7F-47* for the purpose of the 10% state aid growth limitation. This kind of adequacy is 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 was more than \$93,476,013, the sum of the local fair share, equalization aid, special education categorical aid and security aid. Subtracting \$40,184,235 spent on transportation and special education expenses from the operating budget leaves only \$67,517,104 for the children of the public schools, an amount that is \$25,958,909 below adequacy of \$93,476,013.

9) 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.

10) 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.

11) 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.

12) 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*.

13) 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).

14) 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 be exacerbated. Transportation and extraordinary special education expenses, expected to increase to  $\$58,017,045$ , will consume 50% of the operating budget in 2019.

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 provide 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* and to recommend to the legislature that the state aid growth limitation is inapplicable to any and all possible remedies.

#### COUNT II

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

16) 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.

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

18) LHS provides some special education students with an in-class support teacher in addition to a regular subject instructor while other students are provided with a special education teacher without a regular education teacher. Special education instructors and special education in-class support are only provided for mathematics and language arts. The district has inadequate funding and does not provide special education students in LHS with in-class support or special education services for science or social studies.

19) 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.

20) 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.

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

22) The deficiencies in funding and remediation 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, a little more than 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 mean of 91.6%, and below the urban median of 77.8% and the urban mean of 75.5%.

23) *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)

24) 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.

25) 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 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).

26) 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.

27) 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. Moreover, LHS formerly employed a Latin teacher, a media production teacher, and teacher aides to help with instruction in general. The rich curriculum of two decades ago has been reduced to meeting basic requirements for graduation due to inadequate funding.

28) 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.

29) 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.*

30) 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, 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 commit recommending 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

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

32) 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)

33) 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.

34) 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 students live, is 7,602 persons per square mile, slightly less than the median of the urban districts, but almost seven times denser than the New Jersey average. (Exhibit 9)

35) 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 20.7%. (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.)

36) 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.

37) 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.

38)

39) 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%.

40) 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.

41) 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. Funding T & E in the public schools and the education of the non-public school students is "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).

42) 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%.

43) 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). 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.

44) 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.

45) 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 2014 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.

46) 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.

47) 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 methodology (of dividing Lakewood property wealth by enrollment) to be "property wealthy."

48) 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.*

49) 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

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

51) 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>

52) 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](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.

53) It is a 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.

54) 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.

55) 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 with high taxation because they have been capriciously determined to have disposable wealth since their children attend nonpublic schools in order to get a religious education.

56) 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.

57) 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. In the eyes of the Department, its taxpayers have money. Its children do not count. 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," to use any and all administrative remedies and to make any and all recommendations to the legislature that will qualify Lakewood for 100% facility financing under the School Development Authority pursuant to *NJSA 18A:7G-3* and that going forward, qualify Lakewood to receive the same full preschool expansion aid as the other urban districts.

COUNT V

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

59) 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 classified student cannot reasonably 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.

60) 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 no provision in the formula to count "each special education student in a district."

61) 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.

62) 207 children with extraordinary needs in Lakewood were found and evaluated out of the population of 30,500 children and provided with a 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 have 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.

63) Moreover, the enrollment of each extraordinary needs special education child into the district is not offset by a proportional enrollment, or any at all, of regular education children from the same base non-public population. Hence, each additional enrollment does not even increase the adequacy budget and special education categorical aid by their base cost allocated by the SFRA for special education children, but only 14.69% of their base cost. This loss of the base cost in the adequacy budget and in categorical aid due to the census-method is in addition to the drain of the extraordinary costs on the operation budget.

64) 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 in the typical district offsets not only the base cost, but more or less the extraordinary expenses of students 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.

65) Lakewood is not over classifying. Large districts such as Paterson, with an enrollment of 26,423, send 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.

66) The Department violates the right of all students with disabilities to equal protection of the law under the Fourteenth Amendment to the Federal Constitution because the local capacity in Lakewood cannot provide for the extraordinary special education expenses of a population of 30,500 on a budget designed for 5,500 without draining funds from in-house and mainstreamed special education students in the public schools. 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 in a school for the disabled 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.

67) The deficiency of funding has led 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% of 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 education students in 2013 of 67.8% in language arts and 38.2% in mathematics.

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

WHEREFORE Plaintiffs petition the Commissioner for a 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, to implement any and all administrative remedies for the state to absorb more of the cost, 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 committing to recommend 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

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

70) 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 itself \$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.

71) 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.

72) 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.

73) 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 recommend to the governor and legislature the creation of new categorical aid that will remedy to transportation crisis in Lakewood.

#### COUNT VII

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

75) The district administration has been warning the state of its unique circumstances and special needs for over two decades. (Exhibit 18).

76) A formula 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.

77) 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.

78) 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 \$500 million dollars a year 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 in the public schools.

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.

\_\_\_\_\_  
Arthur H. Lang  
Attorney for Plaintiffs

Dated June 16, 2014

PETITION CERTIFICATION

I, Arthur H. Lang, Attorney at Law, 918 East Kennedy Blvd., Lakewood, NJ 08701, being of full age and duly certify and say:

1. I am the counsel for Plaintiffs in this matter. As such I am fully familiar with all of the facts of this case and am authorized to make this Verification.

2. I have written the foregoing complaint and the factual allegations set forth herein are true and correct to the best of my knowledge, except those facts alleged upon information and belief. As to the facts alleged upon information and belief, they are true and correct to the best of my information and belief.

I certify that the foregoing statements made by me are true. I am aware that in any of the foregoing statements made by me are willingly false, I am subject to punishment.

/s/Arthur H. Lang  
Arthur H. Lang, Esq.

Dated June 16, 2014

PETITION CERTIFICATION

I, Arthur H. Lang, Attorney at Law, 918 East Kennedy Blvd., Lakewood, NJ 08701, being of full age and duly certify and say:

1. I am the counsel for Plaintiffs in this matter. As such I am fully familiar with all of the facts of this case and am authorized to make this Verification.

2. I have written the foregoing complaint and the factual allegations set forth herein are true and correct to the best of my knowledge, except those facts alleged upon information and belief. As to the facts alleged upon information and belief, they are true and correct to the best of my information and belief.

I certify that the foregoing statements made by me are true. I am aware that in any of the foregoing statements made by me are willingly false, I am subject to punishment.

Arthur H. Lang, Esq.

Dated June 16, 2014

# EXHIBIT B



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW  
9 Quakerbridge Plaza  
P.O. Box 049  
Trenton, New Jersey 08625  
(609) 689-4057  
Fax - (609) 689-4100

JOHN S. KENNEDY  
ADMINISTRATIVE LAW JUDGE

March 11, 2015

Arthur H. Lang, Esq.  
918 East Kennedy Boulevard  
Lakewood, NJ 08701

Geoffrey N. Stark, DAG  
Division of Law  
P.O. Box 112  
Trenton, NJ 08625-0112

Paul L. Tractenberg, Esq.  
123 Washington Street  
Newark, NJ 07102

Re: **Alcantara, et al. v. Hespe, Commissioner of Education, et al.**  
OAL Dkt No. EDU 11068-14  
Agency Dkt No. 156-6/14

Dear Counsel:

Enclosed please find an Order granting Mr. Tractenberg's Motion for Leave to Participate in the above-captioned matter. Please note, I have scheduled a telephone conference on April 2, 2015 at 3:00 p.m. to discuss this matter going forward. My chambers will initiate the telephone conference.

Very truly yours,



John S. Kennedy  
Administrative Law Judge

JSK/cmo  
Enclosure  
c: Clerk's Office – Trenton



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER GRANTING MOTION**  
**FOR LEAVE TO PARTICIPATE**  
**PURSUANT TO N.J.A.C. 1:1-16.6**

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

**LEONOR ALCANTARA, ET AL.,**

Petitioners,

v.

**DAVID HESPE, COMMISSIONER OF  
EDUCATION, ET AL.,**

Respondents.

---

**Arthur H. Lang, Esq.,** for petitioners

**Geoffrey N. Stark,** Deputy Attorney General, for respondents (John J. Hoffman,  
Acting Attorney General of New Jersey, attorney)

**Paul L. Tractenberg, Esq.,** Participant

Motion Submitted: January 14, 2015

Decided: March 11, 2015

BEFORE **JOHN S. KENNEDY, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioners, consisting of students and parents of students attending schools in the Lakewood School District, as well as parents of a nonpublic school student in Lakewood, bring this action challenging the allocation method and amount of State funding received by the Lakewood School District. In lieu of an Answer, State respondents filed a Motion to Dismiss. Oral Argument on that motion was scheduled for January 15, 2015. On January 14, 2015, a Motion was filed by Paul L. Tractenberg, Esquire, seeking leave to participate pursuant to N.J.A.C. 1:1-16.6. Briefs both in support and in opposition to the motion to participate were filed and the record closed on February 9, 2015. At issue is whether Mr. Tractenberg should be permitted leave to participate in this matter.

**FACTUAL DISCUSSION**

Paul Tractenberg has been a faculty member of Rutgers Law School-Newark since 1970 and is the founder of the Institute on Education Law and Policy at Rutgers-Newark. He has been involved in New Jersey's school funding and education reform litigation via Robinson v. Cahill, 118 N.J. Super. 223 (1972), and Abbott v. Burke, 100 N.J. 269 (1985). In these two cases, Tractenberg was involved in the OAL, trial court appellate division and Supreme Court proceedings having argued before the New Jersey Supreme Court fourteen times. His professional and academic focus is on advancing the educational interests of New Jersey's public school students. Tractenberg seeks to participate in this case as amicus curiae due to the very complex nature of the case which raises important questions about the operation of New Jersey's school funding system. It is his belief that his experience and expertise in education law and policy can assist in the administrative adjudication of this matter.

State respondents oppose the motion and assert that non-parties may move to participate only if they have a "significant interest in the outcome of the case" pursuant to N.J.A.C. 1:1-16.6(a). Respondents contend that Tractenberg has failed to

demonstrate that he has the requisite stake in petitioners' claims to demonstrate the type of significant interest contemplated by N.J.A.C. 1:1-16.6.

### LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:1-16.6(a) permits any person or entity with a significant interest in the outcome of a case to move for permission to participate. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1-16.6(b). "Participation" is defined in N.J.A.C. 1:1-2.1 to mean "the process by which a non-party may, by motion, be permitted to take a limited part in a proceeding. "Significant interest" has not yet been defined by an appellate court. "Interest" as used in the rule requires that the movant have some cognizable stake in the claim. See Canal Street Pub v. City of Paterson, 6 N.J.A.R. 221 (1982).

Here, Tractenberg has demonstrated a significant interest in the outcome of this case as his professional and academic focus is on advancing the educational interests of New Jersey's public school students. As a law professor with a focus on education law, his interest in furthering the appropriateness of the allocation method and amount of State funding received by the Lakewood School District is cognizable. Tractenberg's participation is likely to add constructively to the case and assist the parties better understand the complexities of this litigation. He has been directly involved in the two leading cases challenging school funding and that experience and historical perspective can only benefit this tribunal. Based on the foregoing, I **CONCLUDE** that Tractenberg shall be permitted to participate in this case.

N.J.A.C. 1:1-16.6(c) requires the judge to determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or

3. The right to file exceptions to the initial decision with the agency head; or
4. All of the above. Id.

There are strong public interest aspects in this case. Tractenberg's participation can assist this tribunal and the parties to navigate the complex and important issues presented. Therefore, I **CONCLUDE** that Tractenberg shall be permitted to participate in all levels of this case including oral argument, filing statements or briefs and the right to file exceptions to the initial decision with the agency head.

**ORDER**

Based on the foregoing, the Motion to Participate pursuant to N.J.A.C. 1:1-16.6 is hereby **GRANTED**, and I will **ORDER** a conference call to take place on April 2, 2015 at 3:00 p.m., to consider a briefing schedule and oral argument on respondents' motion to dismiss. The call will be placed by my chambers.

So **ORDERED**.

This order may be reviewed by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

\_\_\_\_\_  
March 11, 2015  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

cmo



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW  
P.O. Box 049  
Trenton, NJ 08625-0049

OAL Docket. No.: EDU11069-2014 S

Agency Ref. No.: 156-6/14

Transmitting Agency: Department of Education

Judge: Kennedy, John S

Judge Phone No. (609) 689-4057

\*\*\*\*\*

Alcantara, Leonor, Individually and as Guardian ad Litem for E.A., et. al. v. Hespe,  
David Comm. of Ed., NJ State Bd. of Ed. & NJ Dept. of Ed.

Notice of  
Status Conference

\*\*\*\*\*

Nature of proceeding:

Petitioners challenge the allocation method and amount of State funding received by the Lakewood School District.

A status conference in this case will be held on:

**Date:** 04/02/2015

**Time:** 3:00PM

**Location:** Telephone

March 11, 2015  
Date

Department of

689-4057  
\*\*\*\* \*\*

at the Office of the Deputy Clerk, OAL

\*\*\*\* \*\*

0000

Department of

689-4057

\*\*\*\* \*\*

0000

Department of

689-4057

\*\*\*\* \*\*

0000

Department of

689-4057

\*\*\*\* \*\*

0000



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW  
P.O. Box 049  
Trenton, NJ 08625-0049

SERVICE LIST  
OAL DOCKET NO. EDU 11069-2014 S

Arthur Lang, Esq.  
918 East Kennedy Blvd.  
Lakewood, NJ 08701

Geoffrey N. Stark, DAG  
Division of Law  
PO Box 112  
Trenton, NJ 08625-0112

Paul L. Tractenberg, Esq.  
123 Washington Street  
Newark, NJ 07102