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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) OAL DOCKET No:
for A.S.) EDU 11069-2014S
Petitioners,)
v.) Agency Ref. No.:
) 156-6/14
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.)
-----)

BRIEF IN OPPOSITION TO SECOND MOTION TO DISMISS

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APPLICABLE RULES

R. 4:37-2(b) After having completed the presentation of the evidence on all matters other than the matter of damages (if that is an issue), the plaintiff shall so announce to the court, and thereupon the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal of the action or of any claim on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. Whether the action is tried with or without a jury, such motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor.

F.R.E. 803(8) The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness. . . (8) *Public Records*. A record or statement of a public office if: (A) it sets out: (i) the office's activities; (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and (B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

F.R.E. 902(5) The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted. . . (5) *Official Publications*. A book, pamphlet, or other publication purporting to be issued by a public authority.

N.J.R.E. 202 (a) The failure or refusal of the judge to take judicial notice of a matter or to instruct the trier of the fact with respect to it shall not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

N.J.R.E. 803. "The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness. . . (8) *Public records, reports, and findings*. Subject to Rule 807, (A) a statement contained in a writing made by a public official of an act done by the official or an act, condition, or event observed by the official if it was within the scope of the official's duty either to perform the act reported or to observe the act, condition, or event reported and to make the written statement, or (B) statistical findings of a public official based upon a report of or an investigation of acts, conditions, or events, if it was within the scope of the official's duty to make such statistical findings, unless the sources of information or other circumstances indicate that such statistical findings are

not trustworthy.

N.J.R.E. 902(e). Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following. . . (e) *Official publications*. --Books, pamphlets, or other publications purporting to be issued by public authority.

N.J.A.C. § 1:1-15.1 Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

N.J.A.C. 6A:13-3.1 Class size in high poverty districts (a) A high poverty school district as used in this chapter means a district in which 40 percent or more of the students are "at-risk" as defined in P.L. 2007, c. 260. 7 (b) 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; provided that if the district chooses to maintain lower class sizes in grades kindergarten through three, class sizes in grades four and five may equal but not exceed 25. Exceptions to these class sizes are permitted for some physical education and performing arts classes, where appropriate. School districts previously subject to N.J.A.C. 6A:10A and 6A:10 shall implement the class size requirements set forth in this section during the 2008-2009 school year and all other school districts to which this section applies shall plan to implement the class size requirements beginning in the 2009-2010 school year and implement in the 2010-2011 school year.

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Haines v. Home Depot U.S.A., Inc., 2012 BL 82478, 2012 U.S. Dist. LEXIS 47967 (E.D. Cal. Apr. 4, 2012).34

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PRELIMINARY STATEMENT

Petitioners challenge the SFRA as applied to Lakewood, that there is no rational relationship between what the statute says public school students should get and what they actually get. Petitioners do not challenge the SFRA calculation of the cost of T & E in Lakewood. Hence, they do not have the same burden as in Abbott and Bacon of showing that the statutory parameters are insufficient for T & E. On the contrary, Petitioners admit that the adequacy cost as defined in the statute is sufficient for T & E in Lakewood. The challenge is over revenue, that the statute needs a correction to cover the expense of providing mandated transportation and special education services to a population of 31,000 nonpublic children, funds that must come out of the adequacy budget before a dime is spent on the public schools costs as defined in the statute. The statute's funding parameters are sufficient for T & E, but the formula needs an additional term to ensure that the public school students get what the statute says they should get. It is not a defense for Respondents to argue that loans have been granted or that property values have increased. These are temporary treatments for deficits but the shortfalls are only symptoms of the foundational problem and cannot be permanent fixes to the fact that the

adequacy budget ignores the large population for which the district is mandated to serve. Petitioners thus challenge the calculation of adequacy in that it needs to include a provision regarding the mandated expenses so that the revenue coming to the system of public schools is the statutory cost of T & E in Lakewood.

STANDARD FOR DISMISAL

R. 4:37-2(b) "After having completed the presentation of the evidence on all matters other than the matter of damages (if that is an issue), the plaintiff shall so announce to the court, and thereupon the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal of the action or of any claim on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. Whether the action is tried with or without a jury, such motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor." The judge "is not called upon to make factual findings, but rather, to determine whether, accepting plaintiffs' evidence as true and giving them the benefit of all favorable inferences to be drawn therefrom, reasonable minds could differ. . . ." Walsh v. Madison Park Properties, 102 N.J.Super. 134, 138 (N.J. Super. A.D.,

1968). In deciding a motion made after the presentation of a petitioner's case the "judge is not concerned with weight, worth, nature or extent of the evidence. The judge must accept all the evidence supporting the party against the motion and accord that party the benefit of all inferences than can reasonable and legitimately be deduced therefrom. If reasonable minds can differ, the motion must be denied." 37 N.J. Practice, Administrative Law and Practice 260, § 5.19, (Lefelt, Steven L. et. al.) (rev. 2d ed. 2000).

LEGAL ARGUMENT

POINT I. THE MOTION MUST BE DENIED BECAUSE THE LARGE DEFICITS AND LOANS TO THE LAKEWOOD SCHOOL DISTRICT WHILE UNDER THE CONTROL OF THE STATE MONITORS SUPPORT PETITIONERS' CHALLENGE TO THE ALLOCATION METHOD AND AMOUNT OF STATE FUNDING RECEIVED BY THE LAKEWOOD SCHOOL DISTRICT.

The nature of this proceeding transmitted to the OAL on September 4, 2014 is a "challenge [to] the allocation method and amount of State funding received by the Lakewood school district."¹ An allocation is a distribution of funds, here

¹ *Core Principles*. 1. Lakewood public school students are entitled to a "thorough and efficient" education; 2. The SFRA provides the statutory funding framework for such an education; 3. The adequacy budget is the key SFRA construct for assuring that students have the necessary funding to receive T&E education; 4. Lakewood's unique demographics require that half of the district's adequacy budget is actually spent on school transportation and special education services for the Lakewood community's 31,000 nonpublic school students, thereby severely under-funding the public school students who are overwhelmingly low-income Hispanics; and 5. The State has a constitutional obligation to

the revenue necessary to provide for T & E in Lakewood.² The ultimate question is whether the revenue allocated by the SFRA, the combination of equalization aid and the local share, as applied to Lakewood, is constitutionally sufficient. Surely the Court will take judicial notice that the State recently loaned Lakewood \$28 million to avert the laying off of approximately 300 teachers.³ If Respondents' only answer is to annually loan the district money every year, ostensibly writing it off because the differential between what the district needs and what it is allocated by the formula grows geometrically each year, let the record show that the "allocation method and amount of State funding received by the Lakewood school district" is grossly inadequate.

Respondents' support their motion to dismiss by claiming Petitioners have only proven that Lakewood receives loans.

address this situation and to assure that Lakewood's public school students receive adequate funding for their education.

² See MA T5 134-18 to 135-21 (Michael Azzara, Transcript 5, February 22, 2018, page 134, line 18 to page 135, line 21) for the "marginal impact" to the statewide calculation of local share and equalization aid to the legislative appropriation should it be determined that the SFRA amount revenue necessary for T & E in Lakewood be increased.

³ Lakewood was the only New Jersey school district to be offered a state Department of Education loan for the 2018-2019 academic year, according to DOE spokesman Michael Yaple." Barchenger, S., Lakewood school board member resigns, 'we cannot repay this loan,' Asbury Park Press, May 24, 2018, <https://www.app.com/story/news/education/2018/05/24/lakewood-nj-school-board-member-resigns-cannot-repay-loan/636643002/> This loan was announced May 7, 2018, the day Respondents served their opposition to reconsideration of the motion emergency relief before the Commissioner. The motion for reconsideration was subsequently withdrawn.

This is perplexing. Petitioners have produced testimony as to the necessity of the loans because of the shortage of revenue under the SFRA. The adequacy budget, the foundation upon which local taxpayers and the state each contribute a share, is not rationally related to the cost of T & E in Lakewood. The calculation of the adequacy budget has nothing to do with property values, tax rates, referenda, loans, grants, state budgetary limitations or even a fantasy bridge over Route 9.

If the Court grants the motion to dismiss and the adequacy budget is not corrected to reflect the true needs of the system of public schools in Lakewood the annual deficits will continue to increase geometrically. Lakewood public school students have no guarantee that the State will loan the district enough money to fill the gap next year, or any year afterwards, just in order to maintain the bare-bones system of public education.⁴ Secondly, even though the state has been loaning the district money year after year, the record is replete with testimony concerning teacher exodus due to low-morale and lack of job security because of the uncertainty associated with the inadequate

⁴ The loans cover just a "bare-bones" budget. RF T2 191-23 to 192-14, MA T5 107-17 to 108-25), DS T5 27-21 to 28-10.

revenue that necessitates the loans.⁵ Thirdly, Lakewood students have multiple deficiencies requiring the kind of well-planned intervention needed in most low-income urban districts.⁶ It is impossible for the district to remedy educational and systemic deficiencies and to make responsible programmatic choices, or for any organization to 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. Finally, it should be pointed out that Petitioners have produced testimony that Lakewood students are funded not \$28 million below adequacy (hence bare-bones budgeting), but currently \$40 million below the SFRA cost estimates as adequate for T & E. The past decade of decreasing funding available for T & E due to the miscalculation of the necessary revenue has taken its toll on Lakewood students by all DOE indicators

⁵ LW T2 72-1 to 16; Malka Spitz-Stein, Supervisor of STEM, February 12, 2018, Transcript 3, MS T3 141-22 to 142-13; Marcy Marshall, Principal Lakewood High School, MM T3 230-8 to 231-20.

⁶ **Poverty.** Lakewood is the 555 lowest ranking municipality in per capita income of 564 in New Jersey. Lakewood CDP has the highest percentage of persons in poverty and Lakewood Township is the fourth highest of all urban low-income districts. Lakewood Township is the (DOL spreadsheet <http://lwd.dol.state.nj.us/labor/lpa/industry/incpov/2010income.html> Printout was marked P:7.1) **Large number of low-income students. 91% of students at-risk.** LW T2 44-4 to 13. **Twenty five percent ESL students.** MW T2 40-9 to 21. **Lack of schooling in native country.** T3 212-13 to 12. **Low attendance rate.** MM T3 244-21 to 245-2. **Early start time** for efficient tiering of transportation, DS T5 20-2 to 23.

despite the loans.⁷ A loan just fixes the deficits which are merely symptoms of the inadequate adequacy budget. The presence of the recent \$28 million loan and prior loans are not an answer the challenge brought by Petitioners, on the contrary, they are an implicit admission that the SFRA (adequacy budget) as applied to Lakewood needs to be corrected.

Respondents' discussion in their brief about property values is irrelevant to Petitioners' challenge to the sufficiency of the adequacy budget. Property values are reflected in the calculation of the local fair share but not in the adequacy budget. The adequacy budget is the statutory calculation of revenue necessary to provide T & E based on the estimated cost. If property values increase, the local fair share increases and state aid decreases, but this has no bearing upon the constitutionality of an irrational adequacy budget.

⁷ **Low post secondary attendance rate.** MM T3 266-11 to 16. 44.5% Lakewood students are in post-secondary education 16 months after graduation whereas the state average is 76.1% Only 24.1% of Lakewood students are in a 4-year institution the fall after graduation whereas the state average is 70.5 %. **Low SAT scores.** New Jersey School Performance Report (P-38 at 22.) SAT 2016-17 Reading and Writing score for Lakewood 448, state 551; SAT Math scores Lakewood 452, State 552. Id at 15. **Low graduation rate** MM T3 211-14 to 22. Four Lakewood schools, the only in Ocean County, are on the New Jersey Department of Education, Office of Comprehensive Support, **Priority and Focus school** list, Updated 9/5/2017 (P:44, most recent downloaded "d/ld" on 2/28/2018 <http://www.state.nj.us/education/reform/PFRschools/PriorityFocusSchools.pdf>).

POINT II. THE MOTION TO DISMISS SHOULD BE DENIED BECAUSE THE STATE MONITORS, THE BUSINESS ADMINISTRATOR AND PETITIONERS' EXPERTS TESTIFIED THAT THE ADEQUACY BUDGET DOES NOT PROVIDE ENOUGH REVENUE FOR T & E.⁸

The adequacy budget determines *how much* revenue is needed for T & E, not *where* the revenue comes from. Where it comes, from the state or locally, is determined by the calculation of the local fair share. Witness after witness testified that Lakewood does not have the *how much*, does not have sufficient revenue.⁹ Witness after witness testified that the formula needs to be fixed to ensure adequate revenue. State Monitor David Shafter testified, "I would say a formula so that some portion of those (nonpublic) students could be counted as a percentage, in

⁸ It should be noted that the superintendent and county commissioner signing off on the budget and certifying it for T & E after receiving the loans does not mean that the district is meeting T & E for the purposes of this litigation. "Apparently, a district cannot file a proposed budget without a signed transmittal letter on the specific form designated by the DOE. The letter of transmittal, or school district budget statement signed by a district superintendent and the board of education's secretary, is required, as an administrative practice, to be submitted. . . ." Abbott v. Burke, (Abbott XXI), 206 N.J. 332, 417 (N.J., 2011). Noteworthy is footnote 19: "It should be noted, earlier in the hearings counsel ambiguously referred to the letter of transmittal as a 'certification,' thereby leading to confusion as to whether the document was a sworn statement as opposed to a 'certification' in the non-legal sense of the word. Kim, 6 T 71:1-72:13. Clearly, the transmittal letter and form is not a 'certification' as the legal term is understood; that is swearing to its contents."

⁹ Insufficient revenue for required expenditures. See testimony of State Monitor David Shafter DS T5 33-4 to 9; MA T5 107-17 to 20; Business Administrator Robert Finger, RF T3 196-21 to 23; Dr. Danielle Farrie Research Director of the Education Law Center, Transcript 4, February 13, 2018, DF T4 81-17 to 23.

order to -- in planning the adequacy budget. And the local fair share would be deducted from that. And that would be an -- That would be what the State aid would be." DS T5-93 9 to 14.¹⁰ State Monitor Michael Azzara testified, "They need more revenue. We're -- If it comes from the taxpayers or it comes from the State, that's really a question for the legislature and the courts, not me. I mean, I would assume that it would come from the State because the District is tapped for its property tax." T5 129-21 to 130-3. Again, Petitioners challenge the *how much*, that the adequacy formula does not realistically provide the necessary revenue, regardless of *where* it comes from. Whether the legislature abolishes the property tax caps or not (statewide) or whether the legislature increases the local fair share or not (statewide), is irrelevant to the Court creating a record concerning the "how much" of the adequacy formula.

Dr. Danielle Farrie, Research Director of the Education Law Center testified that "just the special education costs alone are so wildly disproportionate to the actual needs of

¹⁰ See also DS T5 99-25 to 100-5, MA T5 129-21 to 130-3 and DF T4 81-3 to 82-18. The SFRA special education cost in the adequacy budget based on 14.92% of the census of public school enrollment, not actual numbers of special education students. Lakewood has a total of 7,186 K-12 students in the district have been identified and evaluated as students with disabilities (that at any time may opt for a Free and Appropriate Public Education). IDEA Consolidated (P:14)

the students in the district, that there is no way that the district can continue funding its special education program at the levels that are required while receiving revenues that reflect a special education population that is drastically different than reality." DF T5 82-10 to 17.

No matter how you calculate, even if including the annual loans, Lakewood students are receiving an education 35% to 40% below the SFRA adequacy.¹¹ It is doubtful that any student from any district has ever litigated funding (revenue) so far below the parameters of the statutory

¹¹ After special education and transportation costs and reimbursements, there remains only "60-65% of the state and local revenue that the SFRA deems necessary for students to achieve the state's curriculum standards." DF T4 86-3 to 18. Also, \$78 million, 53% of \$144 million 2017-18 operating budget, is spent on transportation and special education. RF T5 183-4 to 186-3. This means that \$67 million remains out of \$102,184,260 in SFRA adequacy for regular education in Lakewood. (\$117,325,784 adequacy as defined - \$10,020,127 spec. ed. cost - \$111,334 speech cost - 5,010,063 spec. ed. Cat. Aid); See also Testimony of Dr. Ross Haber of Haber Associates, Transcript 1, February 5, 2017, RH T1 95-2 to 13 and RH T1 95-22 to 96-6. Note: Dr. Haber used \$117,325,784 "adequacy as defined" (adequacy budget plus categorical special education and security aid) in P:3 (EST. 2017-18 STATE SCHOOL AID). The Division of Finance generated P:3 using the INFO ONLY FY18_FORMATTED.xlsx spreadsheet included in the P:25 cd-rom and summarized by Petitioners in P:2-1 into a printable document comparing Lakewood, Abbott and surrounding districts. The row "Lakewood" lists 296 under the column heading ENC_PSH (Sent to Private Schools for the Handicapped). The \$32 million tuition expense for 2017-18 should be offset by a calculation of SFRA "adequacy as defined" for 296 students. This amount is base, $296 \times \$11,042 \times 0.96780 = \$3,216,188$; special education, $296 \times 14.92\% \times \$17,085 \times 0.96780 = \$730,232$; and speech, $296 \times 1.630\% \times \$1,162 \times 0.96780 = \$5,426$. Hence \$3,951,846 may be deducted from the \$60 million. There is no evidence that any of the 296 students are included in the SFRA at-risk or LEP calculations.

adequacy budget (cost).¹² This is a prima facie argument that the formula needs to be fixed.

POINT III. THE MOTION FOR DISMISSAL SHOULD BE DENIED BECAUSE THE DEFICIENCY IN FUNDING CORRELATES TO A FAILURE IN ALL COMMONLY ACCEPTED INDICATORS OF STUDENT ACHIEVEMENT.

How has the lack of revenue affected the classroom?

Dr. Farrie: "I looked at Lakewood's per pupil spending on classroom instruction between 2000 and 2016 and compared that to other similar districts. So the comparative spending guide groups districts into that are in similar circumstances that could be expected to have similar spending patterns, and whereas in 2000 the instruction per pupil in Lakewood was pretty . . . was pretty spot on with the state average. There has been an increasingly widening gap between the average, not the state average, I'm sorry, the average of other K to 12 districts with student populations above 3500 so that now

¹² Judge Lefelt, then a Superior Court appellate judge, explained CEIFA, under which the Bacon districts litigated for Abbott status, "the Commissioner of Education establishes a 'T & E amount' that is based on the costs necessary to provide the programs and services that will enable an elementary school student to achieve the core curriculum standards. *N.J.S.A.* 18A:7F-3; *N.J.S.A.* 18A:7F-12. The T & E amount is then weighted for the additional cost of middle and high school students and a half-day kindergarten program. *Ibid.* The T & E weighted amount is then multiplied by the number of students in the district to arrive at the T & E budget. *N.J.S.A.* 18A:7F-3; *N.J.S.A.* 18A:7F-13. The Commissioner also calculates a flexible range ("T & E range") above and below the T & E amount to address numerous variables that may affect district spending, such as existing teacher contracts, teacher seniority and regional costs. *N.J.S.A.* 18A:7F-3; *N.J.S.A.* 18A:7F-12. The T & E range is applied to the T & E budget to create a maximum and minimum T & E budget. However, *Abbott* districts, those property poor districts under the protections established in *Abbott v. Burke*, 119 *N.J.* 287, 575 A.2d 359 (1990) (*Abbott II*), have only a maximum budget. See *N.J.S.A.* 18A:7F-5(b); *N.J.S.A.* 18A:7F-13(c)." *Stubaus v. Whitman*, 339 *N.J. Super.* 38, 770 A.2d 1222 (*N.J. Super.*, 2001). "For the 1997-98 school year, the T&E flexible amount shall be \$336, and the T&E range shall be from \$6,384 to \$7,056." Comprehensive Educational Improvement and Financing Act of 1996. P. L.1996, c.138. Aside from state financing of preschool and facilities, Abbott status amounted to approximately a 10% difference in the adequacy (T & E) budget.

Lakewood is spending about 50 percent less than those other districts. So they're spending about \$9,000 per student, and Lakewood is only spending \$6,600 per student on classroom instruction costs. T4 78-3 to 22.¹³

A Okay. So just as sort of an experiment to see what impact this may have had on the Lakewood public schools, I also looked at academic performance over the time period that I had data available. T4 79-16 to 19

THE WITNESS: So because state tests have changed over time and it makes year to year comparisons difficult, what I did was just change each of the test scores, like the raw test scores into a percentile rank, so you could see where Lakewood fell relative to all the other districts in the State, and I looked at each of the statewide assessments from third grade through the HESPA, which is the 11th grade, was the 11th grade assessment, and you can see that in nearly every testing group, both language arts and math, the Lakewood schools saw a drop in their relative performance such that the district is now performing in like the lowest 5 percent of all districts across the state in nearly every area, and this is from a district that had been performing, you know, it changes by test, but somewhere between, you know, 12 and 10 and 22 percent, 29 percent rather. So there has been a significant decline in its relative performance compared to other districts. T4 80-8 to 81-1

¹³ Petitioners independently found that Lakewood Per Pupil Amount-Classroom Instruction (followed by rank out of 101 3500+ K-12 districts) has declined significantly over the last 15 years: 2003-04 \$6,046 (54) 2004-05 \$7,365 (82) 2005-06 \$6,528 (42) 2006-07 \$6,357 (23) 2007-08 \$7,112 (43) 2008-09 \$7,132 (32) 2009-10 \$7,309 (21) 2010-11 \$7,439 (31) 2011-12 \$7,506 (27) 2012-13 \$7,486 (19) 2013-14 \$7,260 (10) 2014-15 \$6,585 (3) 2015-16 \$6,600 (1). Compare to State Average Per Pupil Amount Classroom Instruction 3500+ k-12 2003-04 6,240 2004-05 \$6,604 2005-06 \$6,902 2006-07 \$6,815 2007-08 \$7,538 2008-09 \$7,776 2009-10 \$8,042 2010-11 \$7,904 2011-12 \$8,202 2012-13 \$8,421 2013-14 \$8,596 2014-15 \$8,686 2015-16 \$9,040. Taxpayers' Guide to Educational Spending, <http://www.state.nj.us/education/guide/2017/ind02.shtml> Download February 27, 2018. (P:1)

In their opening and during cross-examination of witnesses, Respondents spoke of improvements in PAARCC scores. An excerpt of their cross-examination of Dr. Farrie follows:

Q Would the fact that district's achievement under the PARCC scores has been increasing, would that change your analysis in any way, shape or form? A No. Q It would not change your analysis that the students are doing better year over year? It would not change your analysis whether or not the students are failing and whether or not their scores are going down? A I did not look at absolute test scores. I looked at relative performance, and as I understand it, districts across the State, PARCC scores are all increasing, part of the reason why I restricted my analysis to 2014. So whether Lakewood's relative performance has changed, I don't know. Just because their test scores have gone up, it doesn't mean that their relative performance compared to the other districts in the State has changed at all. T4 103-15 to 104-6

Petitioners respectfully ask the Court to take administrative notice of the "Three Year Trend Data (The percentage point change of the percent of students who met or exceeded expectations from year one (2015) to year three (2017) for each district on every test)" spreadsheet found on the Department of Education website at:

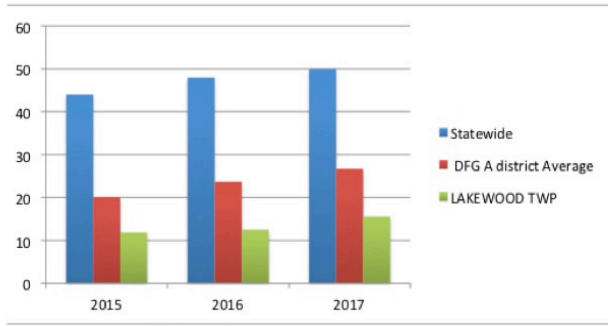
<https://www.nj.gov/education/schools/achievement/17/parcc/springexcel.htm> dw/l May 27, 2018. Petitioners also respectfully request that the Court to take administrative notice of the Statewide PARCC Result also found at:

<https://www.nj.gov/education/schools/achievement/>.¹⁴ The DOE typically groups Lakewood with the lowest income DFG A districts for comparative purposes.¹⁵ The following bar graphs show relative PARCC scores by comparing Lakewood scores with the state average and with the average scores of DFG A districts.¹⁶

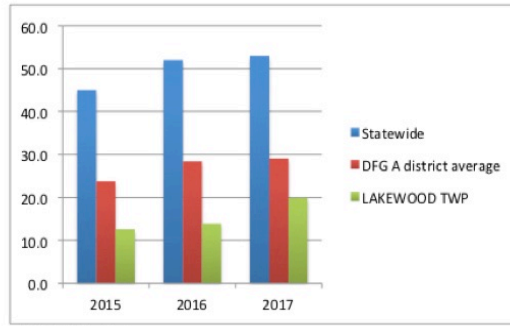
¹⁴ Statewide PARCC scores are submitted as P:63, downloaded May 27, 2018 at: <https://www.nj.gov/education/schools/achievement/17/parcc/spring.htm> <https://www.nj.gov/education/schools/achievement/16/parcc/spring.htm> <https://www.nj.gov/education/schools/achievement/15/parcc/> A cd-rom of the spreadsheet for individual districts is submitted as P:64, downloaded May 27, 2018. A summary of the DOE spreadsheet for Lakewood, surrounding districts and DFG A districts and the DFG A averages is submitted as P:65.

¹⁵ Lakewood has the same characteristics as the Abbott districts and Lakewood. MA T5 115-3 to 15. The DOE typically compares Lakewood schools to Abbott districts schools in the School Report card (P:6-4). P:6-3 shows that Lakewood scored lower than the Abbott districts in both the two most important measures of achievement, the HSPA (11th grade) and GEPA (8th grade) tests. Lakewood schools, the district without a DFG of its own, is typical compare with Abbott district school P:6-4. The bar graphs compare PARCC scores in Lakewood, the rest state average, and the DFG A districts average (the lowest socio-economic group).

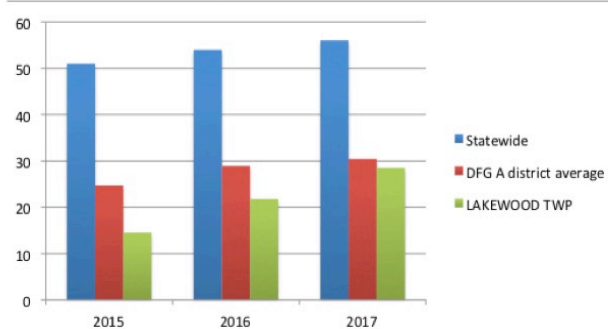
¹⁶ Atlantic City, Buena Regional, Egg Harbor City, Pleasantville City, Fairview Boro, Washington Twp, Camden City, Chesilhurst, North Wildwood City, Wildwood City, Woodbine Boro, Bridgeton City, Commercial Twp, Downe Twp, Fairfield Twp, Lawrence Twp, Millville City, Vineland City, East Orange, Irvington Township, Newark City, Paulsboro Boro, East Newark Boro, Union City, West New York Town, Trenton City, New Brunswick City, Perth Amboy City, Asbury Park City, Keansburg Boro, Dover Town, Seaside Heights Boro, Passaic City, Paterson City, Penns Grv-Carney's Pt Reg, Quinton Twp, Salem City and Elizabeth City.



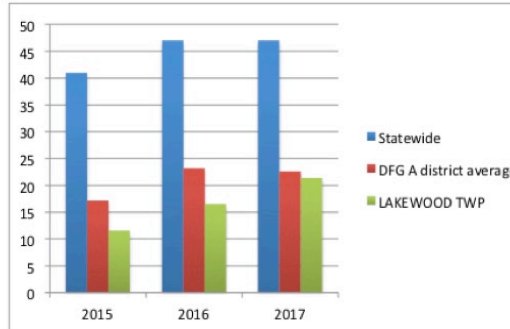
	2015	2016	2017
ELA Grade 3			
Statewide	44	48	50
DFG A district Average	20.1	23.7	26.7
LAKEWOOD TWP	11.9	12.5	15.6



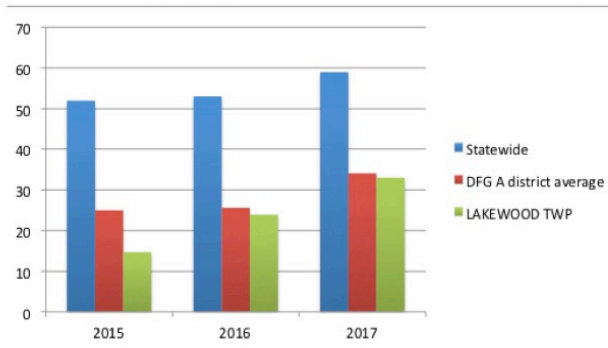
	2015	2016	2017
MATH Grade 3			
Statewide	45.0	52.0	53.0
DFG A district average	23.8	28.4	29.1
LAKEWOOD TWP	12.6	13.9	19.9



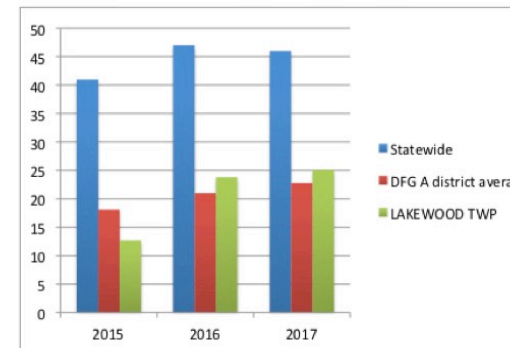
	2015	2016	2017
ELA Grade 4			
Statewide	51	54	56
DFG A district average	24.7	28.9	30.4
LAKEWOOD TWP	14.5	21.8	28.5



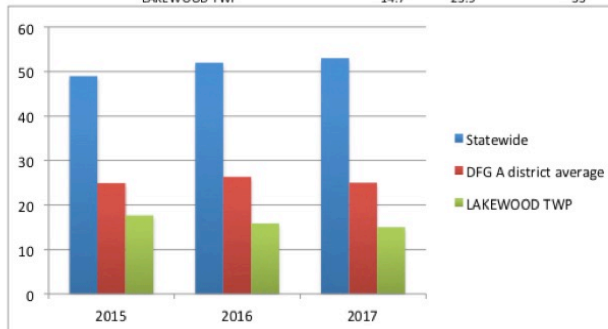
	2015	2016	2017
MATH Grade 4			
Statewide	41	47	47
DFG A district average	17.2	23.2	22.6
LAKEWOOD TWP	11.6	16.5	21.4



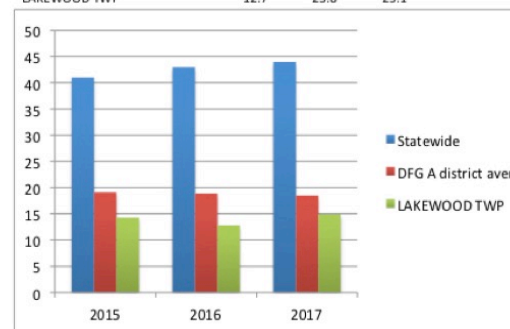
	2015	2016	2017
ELA Grade 5			
Statewide	52	53	59
DFG A district average	25.0	25.6	34.1
LAKEWOOD TWP	14.7	23.9	33



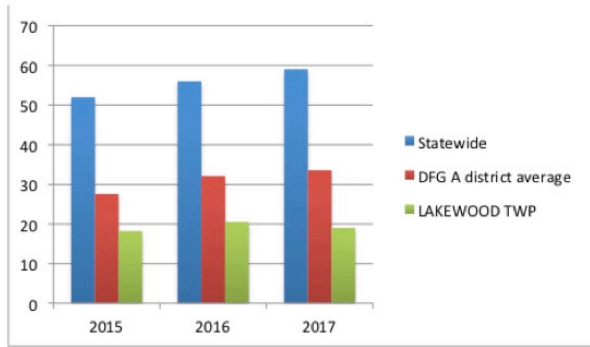
	2015	2016	2017
MATH Grade 5			
Statewide	41	47	46
DFG A district average	18.1	21.0	22.8
LAKEWOOD TWP	12.7	23.8	25.1



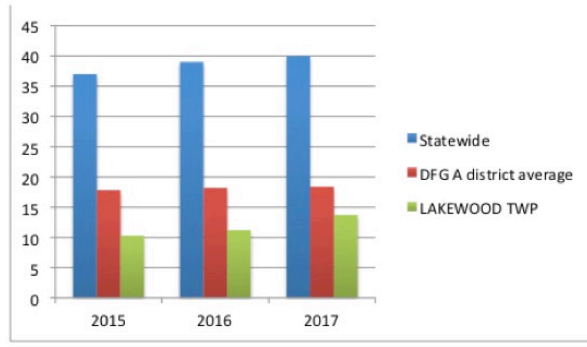
	2015	2016	2017
ELA Grade 6			
Statewide	49	52	53
DFG A district average	24.9	26.3	25.0
LAKEWOOD TWP	17.7	15.9	15



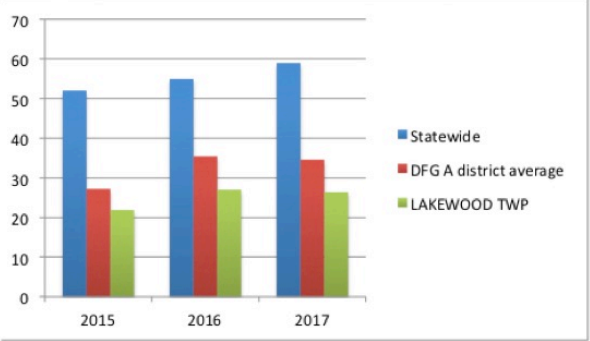
	2015	2016	2017
MATH Grade 6			
Statewide	41	43	44
DFG A district average	19.1	18.9	18.5
LAKEWOOD TWP	14.3	12.8	14.9



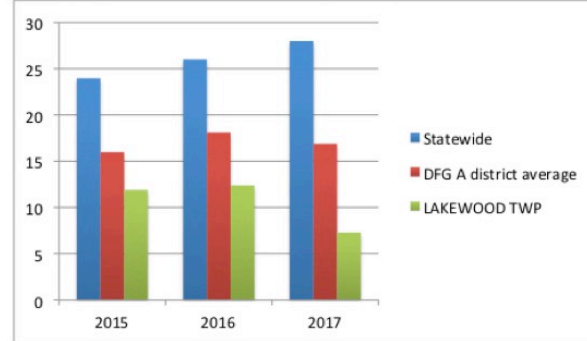
ELA Grade 7	2015	2016	2017
Statewide	52	56	59
DFG A district average	27.6	32.1	33.6
LAKEWOOD TWP	18.2	20.5	19



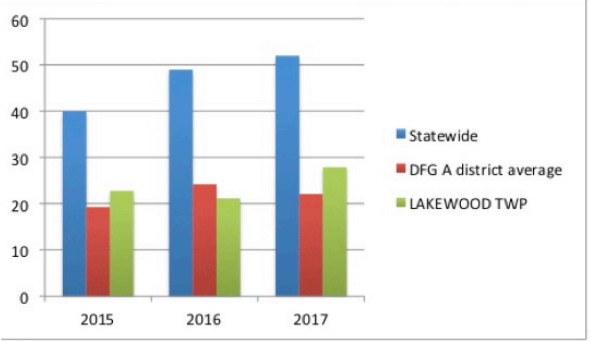
MATH Grade 7	2015	2016	2017
Statewide	37	39	40
DFG A district average	17.8	18.2	18.4
LAKEWOOD TWP	10.3	11.2	13.7



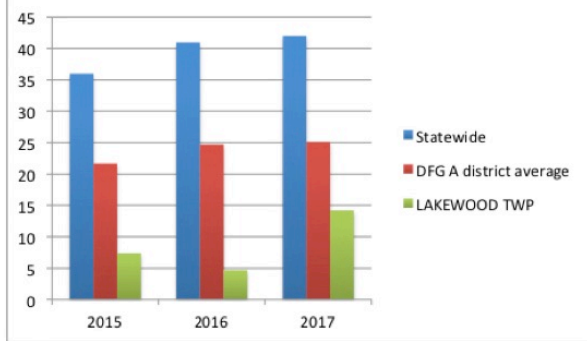
ELA Grade 8	2015	2016	2017
Statewide	52	55	59
DFG A district average	27.2	35.4	34.6
LAKEWOOD TWP	21.9	27	26.4



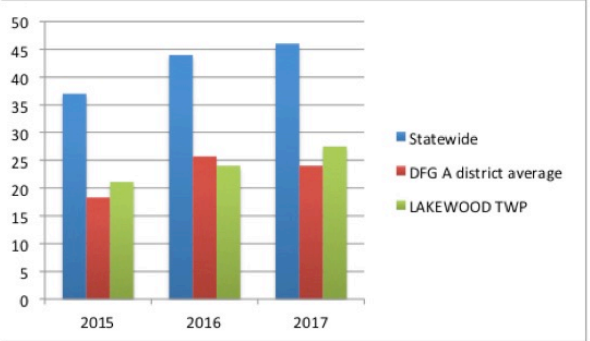
MATH Grade 8	2015	2016	2017
Statewide	24	26	28
DFG A district average	16.0	18.1	16.9
LAKEWOOD TWP	11.9	12.4	7.3



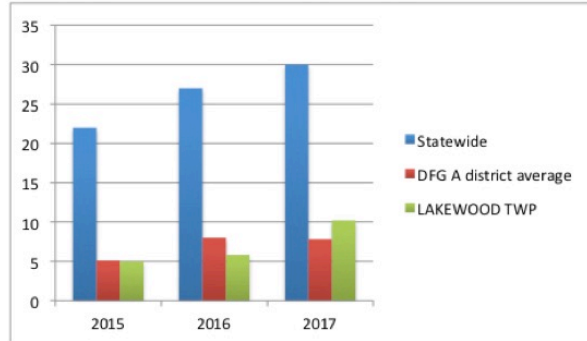
ELA Grade 9	2015	2016	2017
Statewide	40	49	52
DFG A district average	19.3	24.2	22.1
LAKEWOOD TWP	22.8	21.2	27.9



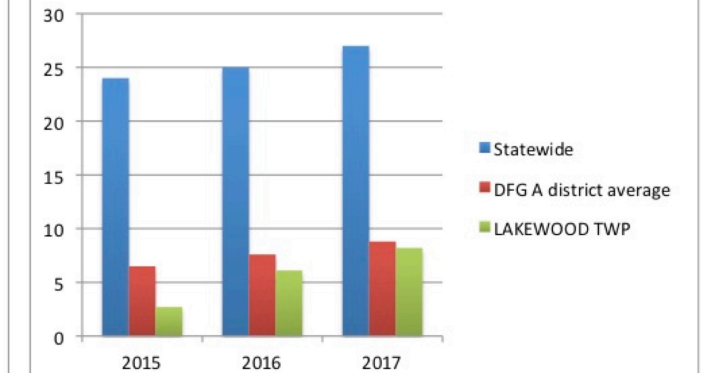
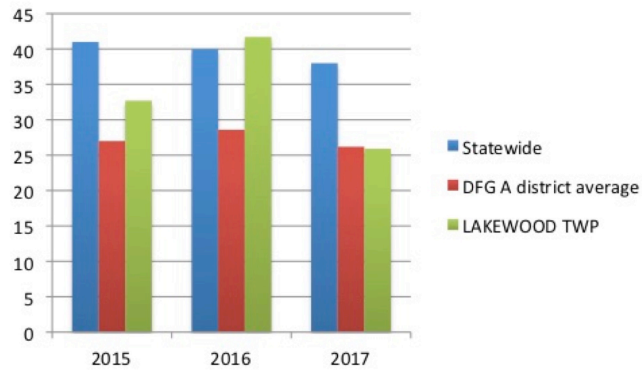
ALGEBRA I	2015	2016	2017
Statewide	36	41	42
DFG A district average	21.7	24.7	25.1
LAKEWOOD TWP	7.4	4.7	14.2



ELA Grade 10	2015	2016	2017
Statewide	37	44	46
DFG A district average	18.3	25.7	24.0
LAKEWOOD TWP	21.1	24	27.5



GEOMETRY	2015	2016	2017
Statewide	22	27	30
DFG A district average	5.1	8.0	7.8
LAKEWOOD TWP	5	5.8	10.2



ELA Grade 11	2015	2016	2017
Statewide	41	40	38
DFG A district average	27.0	28.6	26.2
LAKEWOOD TWP	32.7	41.7	25.9

ALGEBRA II	2015	2016	2017
Statewide	24	25	27
DFG A district average	6.5	7.6	8.8
LAKEWOOD TWP	2.7	6.1	8.2

Lakewood scored higher in 2017 than DFG A districts in Math grade 5, English grades 9 and 10 and Geometry. Trends are produced over periods of time; Respondents bear the burden to argue that these “gains” are statistically significant and inconsistent with Lakewood’s dismal test scores before institution of the PARCC assessments.¹⁷ Respondents also

¹⁷ See P:6-3. Respondents have had three years to challenge Petitioner’s HSPA, GEPA and NJ ASK tables and should be held to the burden of contradicting them and held to the burden answering to the testimony of Dr. Farrie concerning those scores. Lakewood has had more nonpublic students than public students since Bacon was decided in 2002 and the result of not including a term in the calculation of the adequacy “formula so that some portion of those (nonpublic) students could be counted as a percentage” (DS T5 93-10 to 11) has led to a decline in classroom spending and a correlating decline in test scores. Judge Metzger found the following during Bacon:

	Lakewood	State	Abbott 30	ECP-1	B/CD	Ijs
1999 ESPA						
Lang.	43.9	63	34	40.8	42.1	83
Math	50	66	36	41.8	46.5	87
2000 ESPA						
Lang.	49.3	61.3	34.8	32.3	42.9	81.4
Math	61.8	71.7	42.4	47	52.2	90.7

make much ado about the improvement in the graduation rate to 75.7%, a rate that is still 15 points below the state average and not more than the Abbott average of 75.8%.¹⁸ Petitioners respectfully ask the Court to provide summary judgment in their favor if Respondents' only defense is to call attention to these paltry "improvements" and to programs paid for by federal funding.

2001 ESPA ¹⁷ Lang. Math						
1999 GEPA Lang. Math	73 50	85.5 68.5	60.3 34.8	73.7 47.6	69.8 46.5	97 89.4
2000 GEPA Lang. Math	71.6 52.1	83.7 67.4	58.5 35.2	73.3 45.1	67.1 44.9	95.9 88.8
2001 GEPA Lang. Math	61.1 53.6					
1999 HSPT Reading Writing Math	67.9 81.2 71.1	83.9 91.7 87.4	57.3 75.2 63.1	78.6 89.5 82.2	74.2 85 78.7	95 91.7 87.4
2000 HSPT Reading Writing Math	70.1 77.3 76	84.4 86 88.5	57.9 66.4 65.7	78 78.6 81	75.9 77.4 81.7	95.8 95.7 97.6
2001 HSPT Reading Writing Math	81.4 89.6 86.8					

Bacon at 53-54. Lakewood was well above the Abbott districts and slightly below the state averages in the above table. Compare with Dr. Farrie's testimony and the tables in P:6-3. P:6-3 shows that the High School Proficiency Assessment (HSPA, the HSPT in Bacon was the 11th grade High School Proficiency Test) Language Arts scores for Lakewood from 2008-2014 were lower than the average and median scores of the Abbott districts. The HSPA Mathematics scores for Lakewood were about half the state average and more than ten points lower than the average and median of the Abbott districts every year since 2009. The Grade 8 GEPA and NJ ASK Language Arts score for Lakewood was below the average and median of the Abbott districts every year since 2004. The Grade 8 GEPA and NJ ASK Mathematics score for Lakewood was below the average and median of the Abbott districts every year since 2006. Spreadsheets with each district's scores are still available on the DOE website at <https://www.nj.gov/education/schools/achievement/prior.htm>.

¹⁸ LW T2 112-10 to 115-9, 2016 Abbott average P:12, State rate P:29.

The "requirement of a thorough and efficient education is to provide 'that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market,' Robinson I, supra, 62 N.J. at 515, 303 A.2d 273, meant that poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students." Abbott v. Burke (Abbott II), 119 N.J. 287, 313 (1990) .

Lakewood students come from the lowest income homes in New Jersey and yet Lakewood provides (with the loans) less opportunities and levels of support than it formerly provided and less than in neighboring suburban districts.¹⁹

¹⁹ **Inadequate and relatively low number of teacher supervision affects instruction.** MS T3 187-5 to 14, MM T3 233-18 to 234-22, MM T3 252-23 to 254-18. **Lack of assistant superintendents affects instruction.** T3 236-1 to 19. Judge Metzger in Bacon heard testimony from the "two assistant superintendents in Lakewood." Bacon at 70. **Inexperienced teachers affect achievement.** MW T2 69-6 to 15. MS T3 151-8 to 16 and T3 152-11 to 16. **Teacher instability affects achievement.** MM T3 232-18 to 233-1. **Inadequate and relatively low number of instructional interventionists affects achievement.** MM T3 239-10 to 240-6, MS T3 171-9 to 23. **Classroom sizes above capacity.** LW T2 16-7 to 16-25. MS T3 157-20 to 22. **Cuts in Athletic program.** LW T2 121-17 to 122-2. **Spanish is the only Foreign Language.** MM T3 217 10 to 14, T3 219-10 **Loss of in-house industrial arts and vocational Education** . MM T3 203-20 to 204-13. Auto shop abolished, BOE Agenda, June 1, 2011, d/ld 2/28/18 <https://www.lakewoodpiners.org/cms/lib01/NJ01001845/Centricity/ModuleInstance/79/Board%20Agenda%20060111.pdf>. (P:53) **Need for in-house facilities.** LW T2 124 to 126-2. **Inadequate and relatively less in-class support and resource pullout services.** MM T36 242-6 to 243-20, MM T3 238-18 to 21. **Lowest teacher salary.** The 2017 Taxpayers' Guide to Education Spending shows that Lakewood has the lowest median teacher salary of all 103 large K-12 districts with 3,500 or more students. a) Median Teacher Salary (2016-17): \$52,046; Salary Ranking Within Group (2016-17): 1|101; Median Teacher Salary (2015-16): \$50,436, Salary Ranking Within Group (2015-16): 1|103. (P:10-1 and P:10-2

POINT IV. THE MOTION SHOULD BE DISMISSED BECAUSE THE LAW OF THE CASE IS THAT THE OFFICE OF ADMINISTRATIVE LAW IS THE PROPER FORUM AND THAT A FULL RECORD MUST BE DEVELOPED.

The law of this case has already been decided concerning the propriety of this forum and the relief Petitioners seek in it, yet Respondents argue for dismissal for the same reasons they brought before the Court four years ago.²⁰

²⁰ Respondents argued in their moving papers to the first motion to dismiss, "to the extent that the Amended Petition seeks relief in the form of additional State aid from the Commissioner, the claims must be dismissed." First Motion to Dismiss, September 2, 2014 at 10. "Petitioners are not entitled to the declaratory relief sought, and their Amended Petition must be dismissed." *Id.* at 13. In their reply papers, Respondents argued, "Petitioners have sought numerous forms of relief, but have failed to meet the procedural requirements for such relief, or sought relief unavailable in this forum." Respondents' Reply Brief for First Motion to Dismiss April 27, 2015 at 7. "Petitioners seek remedies that cannot be rendered by the OAL or the Commissioner." *Id.* At 10. In fact, Point I of the present motion to dismiss is the same argument as in Point III of the 2014 motion to dismiss. Judge Kennedy wrote in his order denying dismissal:

Respondents lastly argue that dismissal is proper because petitioners seek remedies not available in this type of proceeding. Specifically, the petition failed to meet the procedural requirements for such relief. In this case, as in all prior school funding cases, the ultimate relief sought is of a constitutional dimension that can only be provided by the courts. In *Abbott v. Burke*, (Abbott I) 100 N.J. 269 (1985), the State moved to dismiss for plaintiffs' failure to exhaust administrative remedies. The Abbott I Court had to decide "whether the controversy, in the first instance, can and should be resolved in whole or in part before an administrative tribunal, or whether it must immediately be considered by the judiciary." *Id.* at 296. The Abbott I Court was "satisfied that the presence of constitutional issues and claims for ultimate constitutional relief does not, in the context of litigation, preclude resort in the first instance to administrative adjudication." *Id.* at 297. The Bacon districts initially filed their complaint in Superior Court but the matter was transferred to the Commissioner. The Office of Administrative Law has been charged with producing a complete record in the previous school funding cases, and **I CONCLUDE that the current matter is likewise appropriately placed before this tribunal to establish a complete record and exhaust all administrative remedies.**" Court Order July 23, 2015.

After all the testimony, including the *Commissioner's own monitors*, that the formula needs to be fixed because Lakewood receives inadequate revenue, Respondents moved for dismissal a second time and have sought to exclude almost all of the documentary evidence that was before the previous two judges.

Judge Metzger, the second judge, denied Petitioners summary judgment in 2016 because discovery was not yet complete and the record "cannot account for what the Department knows in the ether."

Judge Kennedy, who most recently presided in the matter, established September 2016 as the end date for discovery and this motion, filed in February 2016, has interrupted the process. Petitioners counter that deficits mount, inequities grow and the data presented to date self-evidently entitles them to relief. Moreover, the Department has installed monitors in Lakewood and generates much of the information that petitioners have collected. Surely, it has enough insight into the facts to join issue on the motion. I do not agree. The record is produced here and must serve as the foundation for all that follows. It cannot account for what the Department knows in the ether.

Respondents make the same arguments again. "The majority of the relief Petitioners seek either cannot be obtained by way of a petition of appeal filed with the Commissioner of Education ("Commissioner") or is not properly before the Office of Administrative Law ("OAL") at this time. . . . Because Petitioners seek relief not available in the present forum . . . the Amended Petition should be dismissed." Motion to Dismiss, April 30, 2018 at 1-2.

Judge Metzger had before him all the documentary evidence, save the current updates, that is currently before this court. He was convinced that “[t]here is no question that Lakewood’s demographics pose singular problems for the public school budget, but petitioners assert a constitutional level of deprivation and this must be sorted carefully.” Respondents had the right to discovery, and ostensibly a hearing, to sort out and answer Petitioners’ documentary evidence. Judge Metzger added, “The Department also suspects that Lakewood overuses out-of-district placement for children with disabilities.”

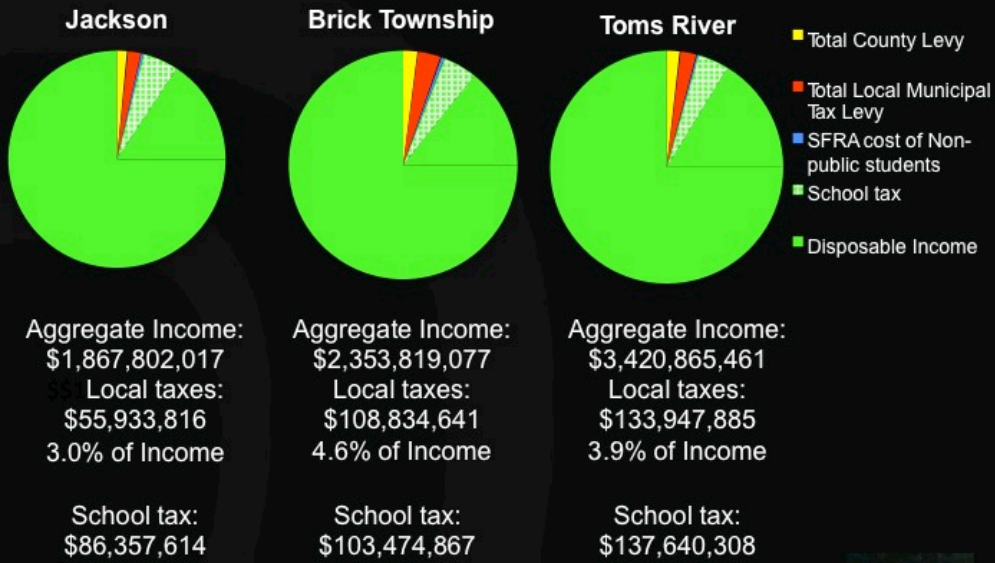
Judge Metzger was the ALJ who heard Bacon v. N.J. Dept of Educ., OAL DKT NOS. EDU 2637-00 through 2656-00, Initial Decision, (Sept. 23, 2002).²¹ He had two concerns about Lakewood when he denied Lakewood special needs status. Firstly, Judge Metzger held in Bacon that Lakewood had real property wealth because “market value base per pupil in Lakewood, at \$451,180, is much higher than the average of the Abbott 30, and is slightly over the state average of \$424,270. Personal income per pupil, at \$110,482, also exceeds all of the Abbott averages and is somewhat below the state average.” Id. at 53. Wealth was at issue in Bacon

²¹ https://njlaw.rutgers.edu/collections/oal/html/initial/edu02637-00_1.html

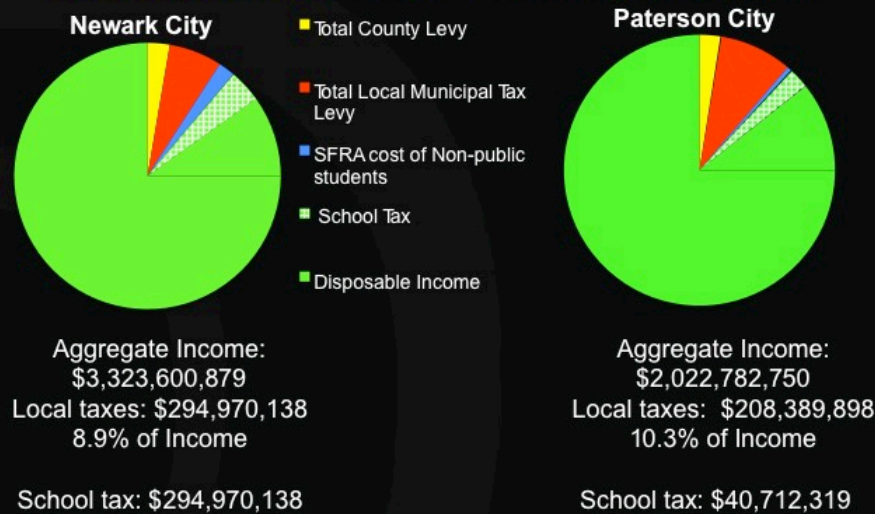
because CEIFA had two separate definitions of adequacy (T & E), one for most districts and another for low-income urban districts or as the Bacon Petitioners tried to establish, for special needs districts.²²

²² Petitioners challenged in the original petition in Alcantara the DOE analysis of the wealth and the municipal capacity of Lakewood presented in Bacon. It was said at the time of Bacon, "Some 8,600 students attend private religious schools, which well exceeds the public school population." Bacon at 69. Here, the heart of Petitioners challenge is that the state does not count Lakewood's 31,000 nonpublic students in the "formula so that some portion of those (nonpublic) students could be counted as a percentage, in order to -- in planning the adequacy budget." DS T5-93 9 to 14, Had the district and its counsel made the this argument in Bacon, Lakewood's per pupil property wealth and income would have been 62% less. To answer the wealth argument in Bacon, Petitioners calculated the SFRA cost (but for LEP) of educating the nonpublic children in Lakewood (the actual aggregate nonpublic cost is not available) and used the most recent Dept. of Comm. Aff.'s and DOE data in the record to update the following circle graphs counsel created in 2013 prior to filing Alcantara comparing the municipal overburden of Lakewood with other municipalities. (Again, Bacon was decided under CEIFA's estimates of T & E which used a two-tiered system of funding, one for low-income urban district and another tier for the rest of New Jersey districts. Municipal overburden and wealth are not dispositive to a challenge under the SFRA as applied to Lakewood and Petitioners' burden of showing that funding for Lakewood public school students is excessively far below SFRA estimates of T & E.):

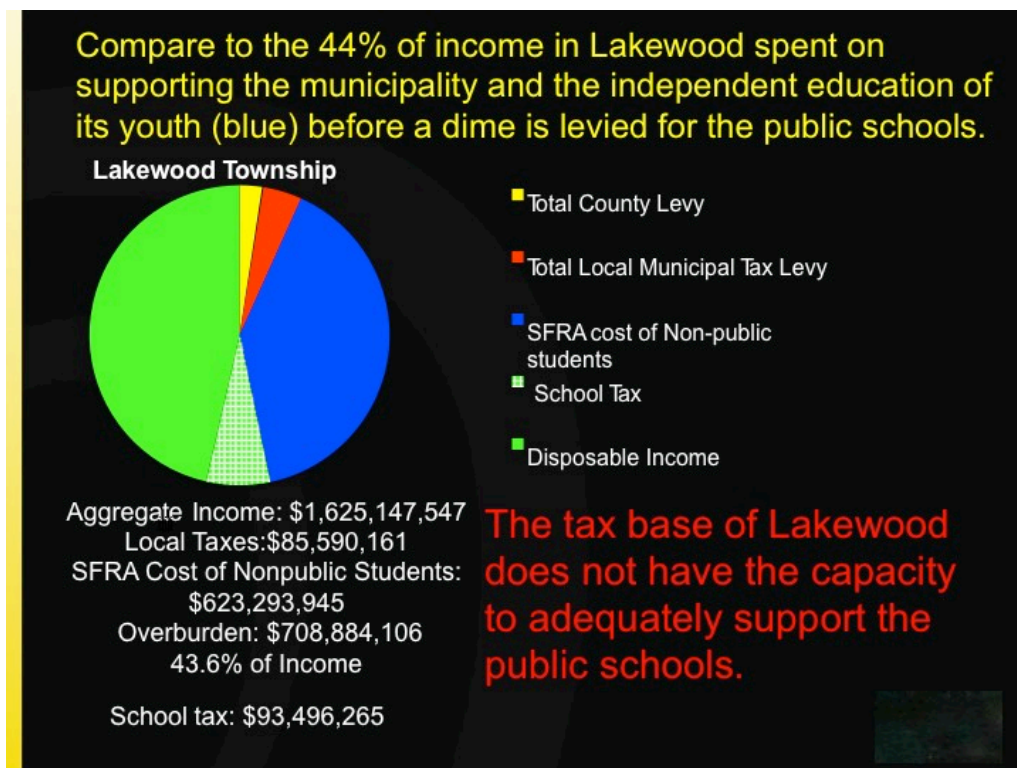
95% of local income (green) remains after municipal services from which the local school tax is paid (green checkers).



Services in the urban municipalities (red and yellow) consume 10% of income overburdening the local capacity to adequately support public schools in the former Abbott districts.



In contrast to CEIFA, wealth is irrelevant to how the SFRA sets adequacy in a district. Wealth is built into the calculation of the local fair share regardless of whether the district has special needs or not. Petitioners do not challenge the amount of funding needed by Lakewood students, as the litigants in Abbott or Bacon. Rather Petitioners request only that which the SFRA entitles them, cost of T & E based on the statutory parameters in the adequacy budget. Funding in Lakewood is 35% to 40% less than the statutory levels, an amount far in excess of the



There would be a "substantial funding impact" in increased state aid but the local fair share would remain essentially the same if all nonpublic students enrolled in the public schools. MA T5 133-10 to 18. The blue sector in the Lakewood circle would be solid green.

differential between Abbott status and non-Abbott challenged in the previous litigation.²³

Judge Metzger's second concern about Lakewood in Bacon was the financial drain of the courtesy bussing costs on T & E. This was definitely on his mind in the case at hand. "Petitioners' reply brief filed on April 26, 2016, offers a letter from the Lakewood business administrator dated April 8, 2016, informing parents that non-mandatory public and private school bussing will cease beginning in the 2016-17 school year owing to fiscal constraints. That is a meaningful development and together with other exhibits attached to this brief reflect evolving facts that may narrow the dispute."²⁴ Discovery was to "narrow the dispute" for meaningful argument over the interpretation of the evidence, not "narrow the dispute" because Petitioners' have not met the burden of their challenge.

V. THE MOTION TO DISMISS SHOULD BE DENIED BECAUSE THE PRESENCE OF FEDERALLY FUNDED PROGRAMS IS NOT A DEFENSE TO A CHALLENGE TO THE ALLOCATION METHOD AND AMOUNT OF STATE FUNDING RECEIVED BY A SCHOOL DISTRICT.

Respondent seek to defend Petitioners' challenge with programs funded by the federal government.²⁵ Four years ago,

²³ See ft. nt. 12, supra.

²⁴ The *Commissioner* incredibly ordered the restoration of courtesy bussing after the referendum failed. T5 13-2 to 14-17.

²⁵ See Respondents' opening statement T1 12-24 to 15-2. Also see T2 74-20 to 24.

Petitioners wrote in their Reply to the first Motion to dismiss.

The constitutional mandate is to provide for a thorough and efficient system of public schools without regard to federal funding. "[F]ederal aid, targeted solely at helping poor children, is not intended to enable a state to keep in place a funding scheme that disproportionately penalizes them. . . . [T]o the extent that the constitutional obligation is measured by the regular education provided by the district (the NCEB), federal aid is irrelevant." *Abbott v. Burke* (Abbott II), 119 N.J. 287, 331 (1990). It is almost certain that without federal money, the extent of the inadequacy in Lakewood would be even more pronounced.

The unique demography of Lakewood brings in more than double the Title I allocation of any other district of similar student count and low-income. Contrast Bridgeton, an Abbott district of 5,209 public students, with Lakewood, a district of 5,767 public students, arbitrarily and capriciously denied Abbott status due to its large number of nonpublic students. Bridgeton had \$3,815,905 available in Title I Part A funding for its 4,522 low-income public school students in 2013-14. Almost three times this amount, \$10,093,379, was available in Title I Part A funding for Lakewood's 4,655 low-income public school students in 2013-14. This anomalous result is because Lakewood, a failing district like Bridgeton, has a large number of nonpublic students unlike Bridgeton. "LEAs serving Priority and/or Focus schools with Title I, Part A funds, up to a maximum of 30% of the total, Title I, Part A grant award must be reserved for the implementation of the schools' approved, School Improvement Plans (SIPs)."²⁶ Over \$6.5 million of the \$18,759,801 in Total Title I Part A available in 2013-14, including carry-over, was reserved off the top for Priority/Focus Interventions in Lakewood public schools.

²⁶ May 13, 2014 Notice of FY 2015 ESEA-NCLB Allocations at 2 is still found on the NJDOE Broadcasts page at: https://homeroom5.doe.state.nj.us/broadcasts/2014/MAY/13/11443/FY%202015%20ESEA_NCLB%20Allocations.pdf

All the children, including nonpublic students, count in the eyes of the federal government, to the advantage of public school children. By contrast, all the children do not count in the eyes of State Respondents, despite \$40,000,000 in excess mandated expenses due to their large number, to the disadvantage of public school children. This is the heart of the matter.

It is ironic that inadequate state funding, the subject of this litigation, has increased the proportional amount of federal funds for the public schools, effectively further supplanting the state's responsibility. By underfunding Lakewood, State Respondents guarantee the failure of Lakewood public schools thereby guaranteeing the diversion of more federal money to the fill the gap. (Petitioners' Reply to Motion to Dismiss at 5-7).

The \$40,000,000 for mandated transportation and tuition serving the 25,000 Lakewood children that the state did not count at the time of the Petition is now \$60,664,006 for 31,000 children. (P:23). The State can no longer supplant its constitutional obligation to provide T & E by diverting a treble share of Lakewood's Title I allocation to the public schools because of change was made to the ESEA. The New Jersey DOE formerly required that "LEAs serving Priority and/or Focus schools with Title I, Part A funds, up to a maximum of 30% of the total, Title I, Part A grant award *must* be reserved for the implementation of the schools' approved, School Improvement Plans (SIPs)."²⁷ The pertinent

²⁷ May 13, 2014 Notice of FY 2015 ESEA-NCLB Allocations at 2 (ft. nt. 26, *supra*, emphasis added). "Lakewood has at least three priority schools and a focus school, which means they're failing schools." LW T2 114-19 to 21. "The Department required Title I school districts with Priority and Focus schools to set aside 30 percent of its Title I, Part

section of the ESEA requiring the disproportionate allocation of Title I funding to failing public schools was abolished by section 1000 of Public Law 114-95—Dec. 10, 2015, “Subpart 1 of part A of title I (20 U.S.C. 6311 et seq.) is amended— (1) by striking sections 1116, 1117, and 1119.”²⁸ This change in allocation had a devastating effect on Lakewood public school students that for a decade benefited from a disproportionate share of the substantial Title I funding generated by the large number of low-income nonpublic school children residing in the district.

A allocation to be used for the implementation of the schools' individualized SIPs. The requirement to reserve this percentage of Title I funds is consistent under Federal requirements for Title I school districts with schools in need of improvement to reserve 20 percent for supplemental educational services and/or public school choice transportation and 10 percent of the allocation for professional development.” 45 N.J.R. 1637(a).

²⁸ 20 USC 6316. SEC. 1116. ACADEMIC ASSESSMENT AND LOCAL EDUCATIONAL AGENCY AND SCHOOL IMPROVEMENT. (b) (10) FUNDS FOR TRANSPORTATION AND SUPPLEMENTAL EDUCATIONAL SERVICES.—A) IN GENERAL.—Unless a lesser amount is needed to comply with paragraph (9) and to satisfy all requests for supplemental educational services under subsection (e), a local educational agency shall spend an amount equal to 20 percent of its allocation under subpart 2, from which the agency shall spend—(i) an amount equal to 5 percent of its allocation under subpart 2 to provide, or pay for, transportation under paragraph (9);(ii) an amount equal to 5 percent of its allocation under subpart 2 to provide supplemental educational services under subsection (e); and “(iii) an amount equal to the remaining 10 percent of its allocation under subpart 2 for transportation under paragraph (9), supplemental educational services under subsection (e), or both, as the agency determines. 20 USC 6316. The regulations are clear that 2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to—(i) Provide, or pay for, transportation of students exercising a choice option under Sec. 200.44;(ii) Satisfy all requests for supplemental educational services under Sec. 200.45; or (iii) Pay for both paragraph (a) (2) (i) and (ii) of this section. . .” 34 CFR 200.48.

To wit: In 2015-16, the 5,232 public free/reduced lunch students (F/RL) and 17,377 nonpublic F/RL students generated \$16,506,961 in Title I funding with carry-over. \$8,132,831 was *disproportionately* allocated to public students and \$7,922,338 was for nonpublic students. In 2016-17 the 5,121 public F/RL students and 19,180 nonpublic F/RL students generated \$20,560,286 in Title I funding with carry-over. \$10,471,991 was disproportionately allocated to public students and \$9,798,517 for nonpublic students. After the change in law, in 2017-18 the 4,450 public F/RL students and 21,162 F/RL students generated \$17,725,360 with carry-over. \$3,950,983 was *proportionately* allocated for public students and \$13,774,377 for nonpublic students. (P:13-1, P:13-3, P:14 and P:14-1, printed directly from DOE Homeroom EWEG (Electronic Web Enabled Grant) <https://homeroom.state.nj.us>). Lakewood public schools now receive \$3,950,983 (of \$17,725,360 total Title I funding), an amount more or less similar to the \$3,701,274 Bridgeton public schools receive.

The loss of the disproportionate allocation of federal funding for public schools generated by the large low-income nonpublic population has been devastating on the

public schools.²⁹ Lakewood High School received \$1,563,653 in Title I funding in 2016-17 but only \$183,026 in 2017-18. (P:37). The unreliability of federal funding is one of the reasons why the Supreme Court "view[s] the State's constitutional obligation to provide a thorough and efficient education as not adequately satisfied if dependent on federal aid, which today is subject to substantial fluctuation."³⁰ Abbott by Abbott v. Burke, N.J. 287, 331 (1990).

The large amounts of federal funding, including Title I and the Carl D. Perkins Career and Technical Education Improvement Act, 20 U.S.C. 2301 et seq., (Perkins funding), enabled the district to obtain Smartboards, the Iready program, Letterland, Career Academics program, 3D prints, Mac carts, High School Alternate Program, Stem Program (robotics, podics), a new Culinary Classroom, TV production studio better known as "Piner Productions", Full Mac labs, 2-story Media center, Fashion design studio, recording arts studio & digital photography studio. Federal

²⁹ For more on the loss of substantial amounts of federal funding, see LW T2 109-9 to 110-8, LW T2 126-10 to 17, MM T3 205-23 206-3.

³⁰ "Furthermore, as we read the federal law, even the mere consideration of federal aid in determining the need for or amount of state aid would violate the federal aid statute. 20 U.S.C.S. § 2854 ('No State shall take into consideration payments under [20 U.S.C.S. §§ 2701 et seq.] in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.')." Abbott by Abbott v. Burke, N.J. 287, 331 (N.J., 1990).

funding contributed to the Middle School Alternate program and the Istation program. (Motion for Emergency Relief, Exhibit 26, OPRA February 18, 2018, P:59).³¹

Petitioners' charts, documents and expert witness have shown that per pupil expenditures for education in Lakewood have significantly declined over the last decade strongly correlating to an accompanying decline in test scores. Respondents have the burden to prove that a constitutionally adequate education is being provided through the revenue determined by the SFRA adequacy budget (the statutory framework of local taxation and equalization aid that provides for T & E). They do not meet their burden with federal funding and grants.³² "[T]o the extent that the constitutional obligation is measured by the regular education provided by the district (the NCEB), federal aid is irrelevant. Federal aid is targeted for specific uses, e.g., compensatory education, special education, and bilingual education. Like state categorical aid, it is not intended to diminish disparities in educational

³¹ Another reason federal funding does not count in this kind of litigation is that supplemental federally funded programs require an adequate foundation of qualified State and local personal to successfully implement them. LW T2 107-8 to 13.

³² For federally funded programs, see LW (cross) T2 101-19 to 104-7. See also OPRA dated February 28, 2018, P:62.

expenditures per pupil." Abbott by Abbott v. Burke, 119 N.J. 287, 331-32 (N.J., 1990).

POINT VI. THE MOTION TO DISMISS SHOULD BE DENIED BECAUSE PETITIONERS HAVE MET THEIR BURDEN OF PROOF WITH THE DOCUMENTARY EVIDENCE MARKED FOR THE RECORD.

Petitioners built their case, served and produced government documents and spreadsheets over the last four years to which Respondents have stipulated nothing except for the state graduate rate.³³ They sought to exclude government documents and spreadsheets, most of which is easily accessible on their own website, even the State Aid spreadsheets in P:25 and the Taxpayers' Guide to Education Spending compiled by Susan Ecks, Supervisor of State Aid Research and Data Analysis, the only member of the DOE to sit with the DAGs during the hearing in this matter. The State not agreeing stipulate is nothing new. When Abbott was before Judge Lefelt in the OAL the "State defendants refused to concede or agree with a single factual submission urged by plaintiffs. (See p. 9, April 22, 1988 cover letter to Defendants' Reply to Plaintiffs' Proposed Findings.) No stipulations were agreed to and the defense

³³ Petitioners include the list of facts in an exhibit and repeat and restate any and all facts in the exhibit as if the same were set forth fully and in their entirety herein.

contested all of plaintiffs' positions through the presentation of testimony, vigorous cross-examination or argument." Abbott v. Burke, EDU 5581-85 (initial decision), August 24, 1988 at 10.³⁴

The material Petitioners submitted into evidence is admissible under N.J.R.E. 803(8) *Public records, reports, and findings* (9) *Records of vital statistics*. Courts will take judicial notice of census data.³⁵ Judicial notice is taken of government documents and publications in general.³⁶

³⁴ ALJ Steven Lefelt "concluded that the testimony or documentary evidence being discussed was credible and sufficient for me to rely upon. Generally, evidence in this category will not contain any conflicting evidence in the record, though the testimony may have been vigorously cross-examined and various arguments or interpretations relating to the meaning of the evidence may have been urged." *Id.* at 11.

³⁵ "We take judicial notice, *N.J.R.E.* 201(b)(3), that the United States Census Bureau indicates that there are approximately 3.3 million married people in New Jersey. <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. State v. Terry, 430 N.J. Super. 587 ft. nt. 5 (N.J. Super., 2013).

³⁶ "A trial court may presume that public records are authentic and trustworthy." Gilbrook v. City of Westminster, 177 F.3d 839, 858 (9th Cir. 1999). "The court has taken judicial notice of the 1974 county budget." Bonnet v. State, 357 A.2d 772, 141 N.J. Super. 177, 236 (N.J. Super. L., 1976); "Competent evidence includes data on prevailing wages from sources subject to judicial notice. *N.J.R.E.* 201; *Child Support Guidelines*, Pressler, *Current N.J. Court Rules*, Appendix IX-A to R. 5:6A at 2146, ¶ 12 (2004) (discussing imputation based on data reported by the New Jersey Department of Labor where child support is at issue)." Storey v. Storey, 373 N.J. Super. 464, 862 A. 2d 551, 557 (N.J. Super., 2004). The US Supreme Court took judicial notice was taken from U.S. Bureau of the Census publication, *I U.S. Census of Mineral Industries: 1954, Series: MI-12B*, p. 4 (1957). "We take notice of the fact that the approximate total bituminous coal (and lignite) product in the year 1954 from the districts in which these 700 producers are located was 359,289,000 tons, of which some 290,567,000 tons were sold on the open market." Tampa Elec. Co v. Nashville Coal Co., 365 U.S. 320, 332 & n.10 (1961). Judicial notice was taken of the Food and Drug Administration's list of new and approved drugs In re Wellbutrin SR/Zyban Antitrust Litig., 281 F. Supp. 2d 751, 754 n. 2 (E.D. Pa. 2003); "Judicial notice has never been strictly limited to

Federal courts consider documents posted on government websites as self-authenticating.³⁷ New Jersey, sister states and federal courts routinely take judicial notice of documents and data from school board and government agency

the constitutions, resolutions, ordinances, and regulations of government, but has been applied by case law to other public documents that are generated in a manner which assures their reliability. Thus, the concept has been applied to census data (see Affronti v Crosson, 95 N.Y.2d 713, 720 [2001]; Buffalo Retired Teachers 91-94 Alliance v Board of Educ. for City School Dist. of City of Buffalo, 261 A.D.2d 824, 827 [1999]; Mackston v State of New York, 126 A.D.2d 710 (1987), agency policies (see Matter of Albano v Kirby, 36 N.Y.2d 526, 532 [1975]), certificates of corporate dissolution maintained by the Secretary of State (see]), the resignation of public officials (see Matter of Soronen v Comptroller of State of N.Y., 248 A.D.2d 789, 791 (1998); Matter of Maidman, 42 A.D.2d 44, 47 (1973), legislative proceedings (see Outlet Embroidery Co. v Derwent Mills, 254 N.Y. 179, 183 [1930]), legislative journals (see Browne v City of New York, 213 App Div 206, 233 (1925)), the consumer price index (see Sommers v Sommers, 203 A.D.2d 975, 976 (1994); City of Hope v Fisk Bldg. Assoc., 63 A.D.2d 946, 947 [1978]), the location of real property recorded with a clerk (see Andy Assoc. v Bankers Trust Co., 49 N.Y.2d 13, 23-24 (1979)), death certificates maintained by the Department of Health (see Matter of Reinhardt, 202 Misc. 424, 426 [1952]), and undisputed court records and files (see e.g. Perez v New York City Hous. Auth., 47 A.D.3d 505 [2008]; Walker v City of New York, 46 A.D.3d 278, 282 [2007]; Matter of Khatibi v Weill, 8 A.D.3d 485 [2004]; Matter of Allen v Strough, 301 A.D.2d 11, 18 [2002])." Kingsbrook Jewish Medical Center v. Allstate Ins. Co., 61 A.D.3d 13 (2d Dept. 2009).

³⁷ "Federal courts consider records from government websites to be self-authenticating under Rule 902(5)." Haines v. Home Depot U.S.A., Inc., 2012 BL 82478, 2012 U.S. Dist. LEXIS 47967, at *26 (E.D. Cal. Apr. 4, 2012). "Records and information located on government websites are self-authenticating under Fed. R. Evid. 902." Newton v. Holland, 2014 BL 24020, 2014 U.S. Dist. LEXIS 10625, at *2-3 n.1 (E.D. Ky. Jan. 29, 2014); Health and Human Services reports and GAO reports found on government websites are self authenticating. See United States ex rel. Parikh v. Premera Blue Cross, 2006 BL 136046, 2006 U.S. Dist. LEXIS 70933, at *10 (W.D. Wash. Sept. 29, 2006); "The FTC press releases, printed from the FTC's government world wide web page, are self-authenticating official publications under Rule 902(5) of the Federal Rules of Evidence." Sannes v. Jeff Wyler Chevrolet, Inc., 1999 U.S. Dist. LEXIS 21748, at *10 n. 3 (S.D. Ohio March 31, 1999); "[E]xhibits which consist of records from government websites, such as the FCC website, are self-authenticating." Hispanic Broad. Corp. v. Educ. Media Found., 2003 U.S. Dist. LEXIS 24804, at *20 n. 5 (C.D. Cal. Nov. 3, 2003).

websites.³⁸ "Given the frequency with which official publications from government agencies are relevant to

³⁸ Judicial notice was taken of information posted on school district websites in Daniels-Hall v. National Educ. Ass'n, 629 F.3d 992, 998-99 (9th Cir. 2010, citation omitted); "In this new technological age, official government or company documents may be judicially noticed insofar as they are available via the worldwide web." In re Agribiotech Sec. Litig., No. CV-S-990144 PMP (LRL), slip op., 2000 WL 35595963, 2 (D. Nev. Mar. 2, 2000); "We may take judicial notice of information contained in summaries of enacted state budgets published on an official government website." Paralyzed Veterans of America v. McPherson, 2008 WL 4183981, at 7 (N.D. Cal. 2008); "Public records and government documents are generally considered not to be subject to reasonable dispute. . . . This includes public records and government documents available from reliable sources on the Internet." United States ex rel. Dingle v. BioPort Corp., 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003); "[S]tatistics published by the International Trade Administration of the United States Department of Commerce reflect a 22% decrease in United States residents traveling to China from 2002 to 2003. See <http://www.tinet.ita.doc.gov/view/f-2006-11-001/index.html>." Victoria Cruises V. Changjiang Cruise Overseas Travel, 630 F. Supp.2d 255, 263 (E.D.N.Y. 2008); Judicial notice was taken of material on Texas state agency website in Coleman v. Dretke, 409 F.3d 665, 667 (5th Cir. 2005); "We may take judicial notice of information contained in summaries of enacted state budgets published on an official government website." Maisto v. State, 154 A.D.3d 1248, n.4 (3d Dept. 2017); "This court has taken judicial notice of 'public information service provided by the United States Postal Service['s website].'" Costanza v. Twp. of E. Brunswick Block 308.05 (N.J. Tax, 2013, citation omitted). "[W]e take judicial notice of the fact that while nearly 281,000 aliens were removed from the United States pursuant to final orders of removal in 2006, see U.S. Dep't of Homeland Sec., Office of Immigration Statistics, *Yearbook of Immigration Statistics* 95 (2008), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf, just over 17,000 federal prosecutions for immigration offenses were commenced during approximately the same time period, see U.S. Dep't of Justice, Bureau of Justice Statistics, *Federal Judicial Statistics* tbl. 4.1 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/html/fjsst/2006/fjs06st.pdf>." United States v. Orozco-Acosta, 607 F.3d 1156, 1164 n.5 (9th Cir. 2010); Judicial notice was taken of numbers showing accessibility requirements of Americans with Disability Act appearing on U.S. Access Board's website in Chapman v. Stations, Inc., 2011 BL 261821, 2011 U.S. Dist. LEXIS 114750, 29-30 (E.D. Cal. Oct. 4, 2011); Judicial notice was taken of documents from Pennsylvania state agencies and Federal Aviation Administration websites in Cali v. E. Coast Aviation Servs., Ltd., 178 F. Supp. 2d 276, 287 n. 6 (E.D.N.Y. 2001); Judicial notice was taken of drug labels from the FDA's website in In re Amgen Inc. Sec. Litig., 544 F. Supp. 2d 1009, 1023-24 (C.D. Cal. 2008); Judicial notice was taken of EEOC website of the "number of these claims filed with the Equal Employment Opportunity Commission (EEOC) has nearly doubled in the past 15 years—from just over 16,000 in 1997 to over 31,000 in 2012." Univ. of Tex. Sw. Med. Ctr. v. Nassar, 81 U.S.L.W. 4514, 2013 BL 167359, 133

litigation and the increasing tendency for such agencies to have their own websites, Rule 902(5) provides a very useful method of authenticating these publications. When combined with the public records exception to the hearsay rule, Rule 803(8), these official publications posted on government agency websites should be admitted into evidence easily."

Lorraine v. Markel Am. Ins. Co., 241 F.R.D. 534, 551 (D. Md. 2007).³⁹

S. Ct. 2517, 2531 (2013); Judicial notice was taken from state DOT's website of completed projects in United States v. Washington, 2013 U.S. Dist. LEXIS 48850, at 58 and n.26 (W.D. Wash. 2013); Judicial notice of disciplinary policy was taken from state prison website in Craft v. Middleton, 2012 U.S. Dist. LEXIS 130945, at 4-5 (W.D. Okla. Aug. 20, 2012); Judicial notice was taken of data on state website concerning assumed names of a corporation and its standing in Hartley v. Villa Scalabrini Nursing & Rehab. Ctr., 2009 BL 208822, 2009 U.S. Dist. LEXIS 91188, 2-3 (N.D. Ill. Sept. 30, 2009); Judicial notice was taken from county website of a policy manual in Taylor v. Shore, 2013 BL 171926, 2013 U.S. Dist. LEXIS 90603, at 3 (M.D. Fla. June 27, 2013); Judicial notice was taken of flight schedule in McDaniel v. GEICO Gen. Ins. Co., 2013 U.S. Dist. LEXIS 60252, 23-24 & n.3 (E.D. Cal. Apr. 25, 2013).

³⁹ Correlating to F.R.E. 902(5) is N.J.R.E. 902(e). "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following. . . (e) *Official publications*. --Books, pamphlets, or other publications purporting to be issued by public authority." Correlating F.R.E. 803(8) to is N.J.R.E. 803. "The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness. . . (8) *Public records, reports, and findings*. "Subject to Rule 807, (A) a statement contained in a writing made by a public official of an act done by the official or an act, condition, or event observed by the official if it was within the scope of the official's duty either to perform the act reported or to observe the act, condition, or event reported and to make the written statement, or (B) statistical findings of a public official based upon a report of or an investigation of acts, conditions, or events, if it was within the scope of the official's duty to make such statistical findings, unless the sources of information or other circumstances indicate that such statistical findings are not trustworthy."

Judicial notice may be taken at any time, even if previously refused.⁴⁰ The ALJ, in the case at hand, is sitting as the Commissioner of Education. "[W]hen the king, long ago, sat personally in court, and, in later times, when judicial officers were in a true and lively sense the representatives and even mere deputies of the king, it was an obvious and easily intelligible thing that courts should notice without evidence whatever the king himself knew or did in the exercise of any of his official functions, whether directly or through other high officers." Thayer, James B., "Judicial Notice and the Law of Evidence," 3 Harv. L. Rev. 7, 303 (1890).

Professor Thayer's reasoning is not lost upon modern commentators of the administrative forum. "The customary assumption that official notice is merely the administrative counterpart of judicial notice and should therefore be governed by the same principles is fundamentally unsound." Davis, Kenneth Culp, Official Notice, 62 Harv. L. Rev. 537, 537 (1949).

"It is inconsistent with the theory that an administrative body is presumed to be especially equipped to decide matters presented to it, and is given great latitude in the conduct of its

⁴⁰ N.J.R.E. 202 (a) The failure or refusal of the judge to take judicial notice of a matter or to instruct the trier of the fact with respect to it shall not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

hearings, to conclude that it could not avail itself of the information and data already actually in its possession without having to permit a petitioner to go through the useless formality of presenting these data which actually are as well known to the commission as matters of fact of which it is presumed to have knowledge. . . Upon principle there is every reason for according to administrative tribunals the widest latitude in taking judicial notice, especially of subject matter embraced in the special field where the tribunal has been given jurisdiction. Indeed, unless this is done, the board or commission becomes gradually hardened into the mold of a sort of inferior court with all of the slowness of procedure characteristic of judicial institutions." Faris, Frank B. (1928) "Judicial Notice by Administrative Bodies," 4 Ind. L.J. 167.179-181 (1928-1929).

Judge Learned Hand commented that the administrative forum may support a finding upon evidence "that would have been excluded at common law . . . at least if more is not conveniently available, and if in the end the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs."

National Labor Relations Board v. Remington Rand, Inc., 94 F.2d 862, 873 (2d Cir. 1938).

The Commissioner of Education possesses all the district and DOE documents and spreadsheets submitted by Petitioners. The DOE routinely uses data from the Division of Taxation, Department of Community Affairs, Department of Labor and various federal Agencies. This data is necessary

to carry out "the duty of the Commissioner to see to it that every district provides a thorough and efficient school system." Board of Ed. of City of Elizabeth in Union County v. City Council of City of Elizabeth, Union County, 55 N.J. 501, 506 (N.J., 1970).

"Unless credibility is directly in issue--and then only on occasion--cross-examination invariably does no more than demonstrate forensic talent or score trial points irrelevant to the final decision." Ernest Gellhorn, Rules of Evidence Official Notice in Formal Administrative Hearings, 1971 Duke L.J. 1, 40. Respondents have already shown an uncanny ability to score points or confuse the witness with misleading irrelevant questions, to misuse statistics, and to premise their "are you aware" questions on outright falsehoods.⁴¹ Petitioners ought not to be

⁴¹ RH T1 103-2 to 4, RH T1 106-8 to 11, RH T1 108-24 to 109-7, RH T3 39-17 to 24, RH T3 77-16 to 79-4. (Confusing witness to deduct from public school necessary expenses irrelevant aid to non-public students.) DF T4 92-3 to 15 (Trying to confuse witness by misusing statistics concerning extraordinary aid.); RH T3 46-3 to 6 (Confronting witness about irrelevant fantasy bridge over US 9 irrelevant to district transportation expense only for remote transportation); RH T3 73-20 to 25, RH 3 74-6 to 18, RH T3 76-17 to 20. (Confusing witness about deducting tax levy, equalization aid and categorical aid from expenses when all three are necessarily included as components of "adequacy"). RH T3 67-22 to 24 (Confronting witness with untruth about BOE ability to raise taxes when in reality they are capped by statute.); RH T3 33-7 to 9 (Confronting witness with untruth about having the lowest tax rate when most recent table of property tax rates posted by the Dept. of Comm. Affairs clearly indicates that this is false.) It should be noted that Lakewood's \$15,895 tax levy per pupil (the SFRA not counting nonpublic students in the adequacy "formula so that some portion of those (nonpublic) students could be counted as a percentage" (DS T5 93-10 to 11) is the heart of this litigation) is higher than any urban or

required to subpoena the scores of federal, state, DOE and district professionals that created the documentary evidence in order to support their argument that Lakewood has less resources than suburban districts and performs worse than the lowest socio-economic Abbott and DFG A districts.⁴²

Finally, New Jersey statute recognizes that an administrative court "shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein." N.J.S.A. 52:14B-10. This is reflected in the administrative code. "Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth." N.J.A.C. § 1:1-15.1.

CONCLUSION

Petitioners have been waiting for four years for answers to the documentary facts of constitutional deprivation in Lakewood submitted with the Amended Petition, updated and

neighboring district but Hoboken. (Motion for Emergency Aid, Statement of Facts, March 7, 2018, paragraph 56).

⁴² "MR. STARK: The other issue is that, seeing as Mr. Lang has -- has rested, subject to the admission of documents, we do anticipate filing a motion to dismiss." T5 212-10 to 13. For the purposes of this motion and subsequent review, documents submitted prior to conference over their admission on March 27, 2018, whether deemed admissible or not, "should be [deemed] marked for identification and included in the record." 37 N.J. Practice, Administrative Law and Practice, § 7.2, at 378 (Lefelt, Steven L. et. al.) (rev. 2d ed. 2000)

supplemented annually, and submitted to this Court. Respondents did not provide an answer to the Petition. Instead they moved for dismissal in 2014. It seems that everyone, everyone except Respondents, knows that the funding formula in Lakewood needs to be fixed.⁴³ The well-known facts that Respondents refuse to confront and answer, the documentary evidence, public statements of the state monitors of Lakewood having a revenue rather than spending problem (see videotaped statement of Michael Azzara provided to the Court tribunal by letter of Participant Paul L. Tractenberg dated March 29, 2015), the sheer impossibility of balancing the Lakewood budget, the necessity of loans just to maintain a bare-bones program, all prove that the formula must be fixed. Now after four years of waiting for an answer, four years of requesting

⁴³ "Statistics cannot quantify what several Lakewood teachers have described to the Asbury Park Press as an emotional tug of war between teaching in a district they love and seeking financial stability and job security in another school district. Superintendent Laura Winters said the financial crisis has led to low morale in the schools. Kathryn Anastasio called the library at Piner Elementary School home for two years until she got notice last year she would be laid off. 'It's heartbreaking to leave,' Anastasio said. 'I felt like I had found a home, and then I felt like I was evicted.' Library staffers were among the last to find out the district had scrambled to find enough cash to offer jobs to those who had been told they'd be laid off. By that time, Anastasio had found a job in Hamilton. She wants to come back to Lakewood. In October, she sent an email to Winters about a job posting. 'Has the funding formula been adjusted, so that Lakewood will be fully funded in the future?' the email reads. 'I would love to return to Piner, but unless the funding formula has been addressed, I can't take the risk.'" Id. Barchenger, S. Asbury Park Press, Lakewood school board member resigns, "We cannot repay this loan," May 24, 2018 <https://www.app.com/story/news/education/2018/05/24/lakewood-nj-school-board-member-resigns-cannot-repay-loan/636643002/>

Respondents' stipulations, admissions or interpretations of the evidence, attempts by counsel before, during and after the hearing to gain their stipulations of fact and the admission of official documents and spreadsheets produced by the State, almost all of which is posted on governmental websites, Respondents still avoid the facts by once again moving to dismiss the case so that Petitioners and the children of Lakewood will never get their answers or interpretations of the evidence. Let Respondents call their witnesses to the stand. Petitioners challenge Respondents to find *one witness* who can credibly testify that the allocation method and amount of State funding received by the Lakewood school district is adequate.

Respectfully submitted,

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