

TABLE OF CONTENTS

	PAGE(S)
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY AND STATEMENT OF THE FACTS	2
Testimony of Ross Haber	5
Testimony of Laura Winters	9
Testimony of Malka Spitz-Stein	15
Testimony of Marcy Marshall	19
Testimony of Robert Finger	24
Testimony of Dr. Danielle Farrie	30
Testimony of David Shafter	33
Testimony of Mike Azzara	39
LEGAL ARGUMENT	42
 <u>POINT I</u>	
THE AMENDED PETITION SHOULD BE DISMISSED BECAUSE THE REMEDIES SOUGHT ARE NOT AVAILABLE IN THIS PROCEEDING	43
A. The Amended Petition Improperly Seeks Relief That Can Only Be Granted by the State Legislature	45
B. Petitioners' Requests for Declaratory Rulings Are Not Properly Before the OAL and Should Be dismissed	48
 <u>POINT II</u>	
PETITIONERS HAVE NOT SHOWN THAT LAKEWOOD IS FAILING TO PROVIDE THEM WITH A THOROUGH AND EFFICIENT EDUCATION	51
CONCLUSION	57

PRELIMINARY STATEMENT

Over the course of five days of hearing, Petitioners have failed to demonstrate that the Lakewood Public School District ("Lakewood" or "the District") is failing to provide its students the thorough and efficient education ("T&E") required by the New Jersey Constitution. See N.J. Const. art. VIII, § 4, ¶ 1. 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.

Moreover, rather than present evidence of any constitutional inadequacies in their education, Petitioners' evidence focused on the uncontested facts that Lakewood has been operating at a deficit and that the State Department of Education ("Department") loaned it money through a state aid advance to balance its budget. Contrary to Petitioners' apparent assumption, such facts do not amount to a per se violation of the T&E Clause. Petitioners' evidence, rather than demonstrate that the students in Lakewood are being denied T&E, in fact supports a finding that the District is and has been providing its students T&E.

Because Petitioners seek relief not available in the present forum and otherwise have failed to present evidence upon

which the Commissioner can base a decision in their favor, the Amended Petition should be dismissed.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS

On June 24, 2014, Petitioners, residents in Lakewood Township and their children who attend either the public schools of Lakewood or one of the many private schools located within the Township's boundaries,¹ filed a Petition of Appeal with the Commissioner against the Commissioner, the Department, and the New Jersey State Board of Education ("State Board") (collectively "Respondents"). They subsequently filed an Amended Petition on or about July 7, 2014. The Amended Petition stems from Petitioners' allegation that "Lakewood does not have the capacity to provide for a thorough and efficient system of public schools (T & E) on its own." (Amend. Pet. at p. 3).

Petitioners request the following relief: (1) the Commissioner make specific recommendations to the Governor of the State of New Jersey (Amend. Pet. at p. 8, 30); (2) the Commissioner make specific recommendations to the New Jersey

¹ The original named Petitioners were: 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.; Tatiana Escobar, individually; and Ira Schulman, individually and on behalf of A.S. Alcantara, Johnson, Perez, and Escobar were all identified as "residents of Lakewood, New Jersey who attend or whose children attend Lakewood public schools." Schulman was identified as "a resident of Lakewood, New Jersey, whose child attends a Lakewood nonpublic school."

Legislature (Amend. Pet. at p. 9, 13-14, 20, 23, 27, 28, 30); (3) the Commissioner issue specific declaratory rulings pursuant to N.J.A.C. 6A:3-2.1 (Amend. Pet. at p. 9, 13, 19-20, 23, 27, 32); (4) the Commissioner provide "any and all" unidentified administrative remedies (Amend. Pet. at p. 9, 13, 20, 27); (5) the Commissioner "retroactively classify Lakewood as a DFG A urban district" (Amend. Pet. at 22); (6) the Commissioner provide Lakewood additional special education and transportation categorical aid (Amend. Pet. at p. 27 and at p. 30).

Respondents filed a Motion to Dismiss the Amended Petition in lieu of an answer on September 2, 2014, arguing that (1) Petitioners failed to join the District as a necessary party; (2) Petitioners lacked standing; and (3) the remedies sought are not available in this type of proceeding. Petitioners opposed the Motion on October 22, 2014, and the matter was transmitted to the OAL as a contested case.

On January 14, 2015, Paul L. Tractenberg, moved to participate in the case representing his own personal interests, which motion was granted by Administrative Law Judge ("ALJ") John S. Kennedy on March 11, 2015. Tractenberg filed an opposition to Respondents' then-outstanding Motion to Dismiss the Amended Petition. Following oral argument on June 9, 2015, ALJ Kennedy issued a decision denying Respondents' Motion to Dismiss on July 24, 2015. ALJ Kennedy ruled: (1) Lakewood is not

a necessary party to this litigation; (2) Petitioners have standing to challenge the school funding; and (3) the current matter is appropriately before this tribunal to establish a complete record and exhaust all administrative remedies.²

On or about February 19, 2016, in the midst of discovery, Petitioners filed a Motion for Summary Decision arguing there was no need to hold a hearing, and no need for further discovery, because, in their opinion, the data necessary to rule on their case was in the public record. Respondents opposed the motion on April 14, 2016, and ALJ Solomon A. Metzger, t/a,³ issued an order denying the motion on July 19, 2016. ALJ Metzger recognized that "[t]here is no question that Lakewood's demographics pose singular problems for the public-school budget," but disagreed with Petitioners that that fact was sufficient on its face to establish a constitutional level of deprivation.

On October 4, 2016, the District filed a Motion to Participate in the case, which was granted on November 21, 2016. In May 2017, Petitioners filed a Motion for Emergency Relief related to the District's 2017-2018 budget deficit that Respondents opposed on May 23, 2017. Petitioners withdrew their

² ALJ Kennedy did not require Respondents to file an answer.

³ This matter was re-assigned from ALJ Kennedy to ALJ Metzger in or around June 2016. Subsequently, it was re-assigned to ALJ Susan M. Scarola in or around June 2017.

Motion on May 24, 2017, as the budget deficit was resolved by the Department through a state aid advance.

Over the course of the hearing dates, Petitioners presented the testimony of six fact witnesses and two expert witnesses. The testimony of each witness is summarized below.⁴

Testimony of Ross Haber

Dr. Ross Haber, a demographic consultant, was qualified as an expert in demographics. (1T44:11-17). He testified that he was not an expert in finance or in state aid, and was not qualified as an expert in those fields. (1T97:25-98:1; 1T113:22-114:1; 3T38:11 ("I am not an expert in state aid.")).

Throughout his testimony, Dr. Haber referred to his report, which addressed not only demographic projections, but also budgetary and state aid projections. Dr. Haber stated that he was "not happy with" his report, and recognized that some of the numbers were "mixed up and they shouldn't be." (3T104:19-105:3).

Dr. Haber has no formal education in finance or statistical analysis. (1T39:23-40:23). He testified that Petitioners retained him to do a historical analysis and five-year projection of population growth in Lakewood's public and non-

⁴ "1T" refers to the transcript of the February 5, 2018 hearing; "2T" refers to the transcript of the February 7, 2018 hearing; "3T" refers to the transcript of the February 12, 2018 hearing; "4T" refers to the transcript of the February 13, 2018 hearing; "5T" refers to the transcript of the February 22, 2018 hearing.

public schools. (1T47:11-15). He relied on "ASSA reports" for historical records of public school enrollment, and a private school reporting database maintained by the Department to gather non-public school enrollment data. (1T54:2-16). He conceded that non-public schools self-report enrollment figures, and that the data is never audited or verified. (3T24:9-16). If children are being bussed in from other communities or states to attend Lakewood's non-public schools, they could be counted in these self-reported enrollment figures. (3T24:25-25:14).

Dr. Haber testified that using the cohort survival methodology, he projected a growth of roughly 5,000 students from the 2017-2018 school year to the 2021-2022 school year in both the public and non-public school populations, though acknowledged that growth could be capped by external factors, such as available residential space. (1T57:25-58:10; 1T61:2-7; 3T35:23-36). He admittedly did not consider that the growing population of Lakewood could correspond to an increase in equalized property value. (3T67:18-21).

Dr. Haber opined on the District's budgetary needs through 2022. He based his projections off of revised and anticipated figures in the User-Friendly Budget, not the actual budget figures, which he conceded would have been the more accurate data set. (1T69:5-71:25; 1T71:1-21; 1T79:3-5; 3T51:17-52:3). Regarding his budgetary projections, he testified, "[l]et me

emphasize, they're estimates based upon trends. There's no way for anybody to really come up with an exact amount in the future." (1T83:14-15).

He described his methodology for projecting the budget as an "estimate based upon the increased population." (1T69:5-13; 1T84:11-13). He conceded that in his calculations, he might have double counted some costs. (3T42:19-43:14). Regarding the District's budget for "other services" (a component of the tuition budget), he conceded "I don't have any definition for that - it was just in the budget - so I can't explain what it is." (1T71:11-21).

In projecting Lakewood's anticipated transportation budget, Dr. Haber testified that his methodology was "not an exact science." (1T65:8-15). He "made an assumption that the transportation [costs] would increase" commensurate to the enrollment. (1T65:8-15). When asked if he considered economies of scale, he responded that "if you add 10 more kids, you're not going to add 10 more buses . . ." (1T84:24-85:1). He did not consider legal and community factors that could affect the transportation budget moving forward. (3T87:23-88:6; 3T45:5-46:7; 3T56:24-57:12) (e.g., non-renewal of the LSTA pilot program; if the municipality were to build a bridge over Route 9 for students to use; if non-public schools were constructed

closer to students' homes; or if parents elected to send their children to non-public schools closer to their homes).

Dr. Haber then offered his understanding as to how the adequacy budget was calculated. He described the adequacy budget alternately as "the amount that's actually needed by the State" (1T89:19-21), and "the minimum funding level required to provide a thorough and efficient education" (3T37:21-25), but conceded that his definition did not align with anything in the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A. 18A:7F-43 to -66. (3T38:1-11). He attempted to project the future adequacy budget by holding it flat from 2017-2022, while conceding that the budget would change from year to year if the student Limited English Proficiency ("LEP") population enrolled in Lakewood changes from year to year. (3T51:5-16).

Dr. Haber concluded that the enrollment in both non-public and public schools is growing, and that there will be an increased need for services. (1T92:7-13). He "[did]n't think that the District will have the ability to properly educate those students over the next few years." (1T96:1-6).

Dr. Haber did not consider other alternatives to raising revenue, aside from additional State aid. (3T34:5-22; 3T67:22-55). He did not consider that compared to other high population districts, Lakewood has one of the lowest equalized tax rates in the State. (3T34:5-12).

Dr. Haber testified that in making projections, if the underlying data is not reliable, then the projections will not be reliable. (1T113:2-5). Yet he admitted, repeatedly and consistently, that there were numerous substantive and typographical errors in his analysis, including, but not limited to, miscalculations and double counting costs in projecting the amount of money the District would need going forward: see, e.g., (1T90:6-8; 1T92:2-3; 3T28:25-29:2; 3T30:5-25; 3T31:9,12-18; 3T36:9-17, 21; 3T53:11-25; 3T54:1-15; 3T55:17-25; 3T56:1-7; 3T59:1-19; 3T70:14-17, 23-25; 3T71:1-8; 3T72:1-10; 3T79:1-25; 3T80:1; 3T81:21-25; 3T82:1-10; 3T83:4-14).

Testimony of Laura Winters⁵

Laura Winters has been the District's Superintendent since 2012 and has been employed in the District since 2001. (2T7:18-19; 2T8:8-19). She has a master's degree and is finishing her dissertation for a doctorate of education with a specialty in curriculum instruction and assessment. (2T12:16-25).

Lakewood consists of approximately 6,092 students spread out over 8 schools: 1 high school, 1 middle school, 5 elementary schools, and a preschool. (2T14:21-22; 2T15:9-10). Ms. Winters testified that District schools are at full capacity with too many students per classroom in some instances. (2T16:21-22). She

⁵ Ms. Winters testified as a fact witness and was not qualified as an expert. (See 2T10:12-23).

acknowledged that the Lakewood Board of Education could put a Special Question on the ballot to see if the community would be willing to financially assist with facility improvement, but that in the past voters have not supported financial assistance. (2T90:8-11, 16-18). Ms. Winters estimates that approximately 80% of the population would qualify free and reduced lunch, but 100% of the students at Lakewood receive free and reduced lunch through a program paid for by the Department of Agriculture, the Community Eligibility Provision Program. (2T41:14-25; 2T43:20-21; 2T44:23-25). There are also approximately 30,000 children who reside within the District, but instead attend non-public school. (2T58:13-18).

According to Ms. Winters, approximately 1,538 students in her District are classified as having limited English proficiency ("LEP"), meaning these students are second language learners with a primary language of Spanish. (2T38:12-20; 2T40:18-19). These students receive support from an English as a Second Language ("ESL") teacher in some classes across all grade levels. (2T38:22-25; 2T39:1-8). A response intervention reading program for students in Kindergarten through grade 2 is in place to assist students who are English Language Learners ("ELL"). (2T97:12-16).

Over the last few years, the District's Child Study Team ("CST") has been asked to conduct approximately 500-600

evaluations for special education services of preschool aged children each year, but they are not all eventually classified as requiring services. (2T56:19-22; 2T57:15-16). Some classified preschool children go to the Lakewood Early Childhood Center or the STARS program, a District-run program run with Individuals with Disabilities Education Act ("IDEA") funding, and some reject placements and decide to enroll in the non-public schools. (2T59:22-25; 2T60:19-23). The CST evaluates children and, in consultation with parents, makes a determination on what placement is best for an individual child. (2T51:24-25; 2T52:1; 2T79:14-16). Any student being sent to an out-of-district placement is counted in the District's public school enrollment for purposes of state aid. (2T79:16-25; 2T80:1). For the 2016-2017 school year, Ms. Winters stated that the District paid \$32 million in tuition costs for approximately 400 public school students sent to out-of-district placements for their education. (2T45:24-25; 2T46:1-24; 2T47:6-7; 2T48:17-20).

Ms. Winters asserted that her role with regard to the budget is to provide educational input rather than financial input. (2T20:13-16). In response to an inquiry as to what having some educational input means, she replied, "So that the programs [that] are needed in the district are put into the budget, what teachers need, what educational programs are needed, what are needed for students." (2T21:2-5). Ms. Winters acknowledged that

all districts must certify each year that its budget provides T&E. (2T84:10-20).

For the past three years, Lakewood has received a loan from the Department through a state aid advance to make up for any deficits in the budget, amounting to \$4.5 million for the 2015-2016 school year and \$5.6 million for the 2016-2017 school year. (2T25:3-9). For the 2017-2018 school year, the District requested \$10 million in a state aid advance loan and received \$8.5 million and a \$1.5 million deferment of any payments owed, for a total of \$10 million in assistance. (2T82:15-25). The most recent state aid advance helped restore prior budget cuts across the board, other than athletics. (2T83:14-20). Ms. Winters testified that the Township gave the District funds to restore the athletic program, though more than half of the approximately \$1.1 million in Township funds went to non-public services, rather than to the public-school students. (2T81:7-23).

Ms. Winters describes the biggest challenges to the District as having its teachers resign because they expect a Reduction in Force ("RIF"), and being able to hire teachers due to the District providing a lower salary than other districts in the county. (2T67:20-25; 2T68:1-2). After the State financially assisted the District for the 2017-2018 academic year, the 140 RIF letters previously sent out were rescinded and the teachers rehired. (2T24:13-24; 2T83:1-6). Unfortunately, 78 teachers,

including tenured and non-tenured, left the District prior to the 2017-2018 school year; however, Lakewood was able to replace them with teachers who, on average, had approximately 4-5 years of experience in the classroom prior to coming to the District. (2T68: 23-34; 2T89:3-9). Lakewood spends a good deal of money on professional development in order to train its staff well, and other districts that have hired teachers from Lakewood have commended Ms. Winters for how well her teachers are trained. (2T68:12-18). Despite this level of experience in new hires, Ms. Winters feels that the students having first-year teachers, as well as the lack of stability created by teacher turnover, is a problem. (2T69:12-15).

Despite teacher turnover, test scores in the District, though below state average, have improved steadily, but Ms. Winters was quick to add that it was not the "progress they want to see in the District." (2T69:21-23; 2T70:20; 2T91:21-25). Lakewood is attempting to aggressively raise its PARCC scores, keeping the high school library open after school three days a week for student use and providing extra help for students through remedial intervention. (2T99:15-24). Further, the District has met all of its growth targets, but for absenteeism, under the Federal Every Student Succeeds Act ("ESSA"), the successor to No Child Left Behind. (2T92:8-25; 2T93:1-9). No

school in the District needs comprehensive or target support under ESSA. (2T94:1-9).

The parties stipulated that Lakewood offers all courses necessary to comply with the State graduation requirements. (2T96:5-25; 2T97:8-9). Lakewood also offers its high school students the opportunity to take multiple Advanced Placement ("AP") classes across subjects. (2T100:4-17). Ms. Winters helped develop an innovative program at the high school, Career Academies, to divide students into learning cohorts based on their interests and further testified that the District starts supporting Career Academies in the Middle School by offering instruction in areas such as robotics, coding, journalism and horticulture. (2T97:24-25; 2T98:1-24). Lakewood Middle School has a new technology classroom to support these classes that is equipped with robotics, 3D printers, Apple T.V., and a Mac Air Cart. (2T99:1-14).

Students may also attend the Ocean County Vocational Technical School through a shared program with the goal of preparing students to enter into a trade after graduation. (2T100:19-25). Some vocational programs are also available at the high school such as graphics design, fashion and apparel, photography and film, video technology, business data entry and Army Junior ROTC. (2T101:1-25; 2T103:1-21). Though below state average, the high school graduation rate has improved steadily

since Ms. Winters became Superintendent (2T112:10-15; 2T115:17-19).

Elementary school students are provided with classes on both computer and library skills. (2T105:5-16). Letter Land, a district-wide phonics and phonemic awareness program, is also in place to assist all students in kindergarten through second grade. (2T97:21-23). Art and music classes are available to the District's students at every grade level. (2T105:17-25). Free instrumental lessons are available to students during school hours starting in fourth grade. (2T106:13-18). Students are also exposed to and able to participate in multiple musical ensembles such as chorus, band, and orchestra. (2T106:1-12).

Testimony of Malka Spitz-Stein

Malka Spitz-Stein is the Supervisor of Science Technology Engineering and Math ("STEM"), and the Supervisor of Chapter 192, 193 grants, in Lakewood. (3T132:16-17). She has been the Supervisor of STEM in Lakewood since September 2011. (3T133:3; 3T156:15). Her role as the Supervisor of STEM is to "ensure that every teacher . . . has a high quality curriculum," and that the STEM curriculum is implemented correctly in the classroom through professional development and classroom observations. (3T133:5-13; 3T176:25-177:6).

In her role as the Supervisor of STEM, Ms. Spitz-Stein oversees the District-wide implementation of the New Jersey Student Learning Standards ("SLS") in Math and Science. (3T189:20-25; 3T190:17-25). In that vein, she has assisted with the development of the District's K-12 curriculum in both Math and Science (3T190:2-4; 3T191:1-3), and has ensured that those curricula are consistent with the SLS (3T182:14-18; 3T190:1-13; 3T191:1-6). Ms. Spitz-Stein testified that the curricula she helped developed, which are consistent with the SLS, are being implemented in the District. (3T191:7-10).

As the Supervisor of STEM, Ms. Spitz-Stein is also involved in hiring decisions and the evaluation of teachers in the Math and Science Departments. (3T149:9-15). She testified that there has been some teacher instability in the District for the past few years. (3T141:22-23). This is evidenced by the fact that there are currently three new teachers in the Lakewood High School Math Department (3T141:11-17), and that, she believes, only 4 out of 13 teachers in the Lakewood High School Math Department currently have tenure (3T136:15-137:2). According to Ms. Spitz-Stein, teachers who are non-tenured are "very often probably only first or second year teachers" who likely "need a lot of training," (3T138:3-10), while, in her opinion, teachers who have been in the District for between four and five years need less oversight (3T150:22-151:2). However, Ms. Spitz-Stein

also recognized that every teacher hired by the District is certified to teach by the Department (3T191:21-24) and that a teacher new to Lakewood could have prior experience in another school district (3T191:25-192:3).

Further, while Ms. Spitz-Stein expressed her opinion⁶ that "more experienced teachers are better" (3T135:20-21), she also recognized that just because a teacher is inexperienced does not mean that the teacher is ineffective. (3T192:8-11). As Ms. Spitz-Stein explained, the District is required, pursuant to the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ Act"),⁷ to rate teachers as ineffective, partially effective, effective, or highly effective every school-year. (3T193:9-21). A tenured teacher is a teacher who has been rated effective or highly effective for four years. (3T135:16-18). Ms. Spitz-Stein had no basis to dispute that, in the 2015-2016 school year, Lakewood rated only 2 out of 396 teachers as ineffective or partially effective (3T193:22-194:12), or that, in the 2014-2015 school year, Lakewood rated only 2 out of 304 teachers as ineffective or partially effective (3T194:13-18).

In Ms. Spitz-Stein's view, having a low percentage of teachers with tenure can affect student test scores (3T151:23-

⁶ Ms. Spitz-Stein was called as a fact witness and was not qualified as an expert.

⁷ N.J.S.A. 18A:6-117 to -129

24) because, she believes, "when you consistently put new teachers" in front of the students, "it's unlikely that the students . . . are going to have their deficits filled and be able to . . . learn the grade level content that's in front of them." (3T152:11-16). According to Ms. Spitz-Stein, the District does have large class sizes in math and science. (3T157:2-4). In the middle school, "6th grade averages in the high 20's. 7th grade the same. 7th grade has some sections that are over 30." (3T157:20-22). The science and math classes at the high school "probably average[] around 20." (3T157:9-15).

With regard to student achievement, Ms. Spitz-Stein is concerned that the District is performing below the State average: its goal is for proficiency for every child. At the same time, she recognized that the District is seeing improvement in its Math scores. (3T188:21-22; 3T189:12). Specifically, the District's performance on the PARCC assessments improved from the 2015-2016 to the 2016-2017 school year. (3T194:19-195:9). In grades 3 to 5, the District is seeing "significant improvement" (3T188:25-189:2), while it is seeing improvement of 1 or 2 percentage points at both the middle school and high school (3T189:4-9).

In Ms. Spitz-Stein's view, in order to bring students in the elementary school to grade level for math, the District would need to make sure that individual students' needs are

being met. (3T169:21-170:17). While the District used to have specific math interventionists--whose job it was to provide Tier 3 intervention for students below grade level--those positions were eliminated due to budget constraints.⁸ (3T171:5-19). However, Ms. Spitz-Stein did state that the District is able to provide Tier 2 and Tier 3 mathematics intervention through the i-Ready math computerized intervention program. (3T195:23-196:1). She stated that the District has found i-Ready to be a reliable program, especially as the number of students proficient on i-Ready very closely matched the number of students who were proficient on PARCC. (3T197:3-7).

Beyond Math and Science, Lakewood offers a computer class for all students starting in Kindergarten; a full-time engineering class at the High School; and a robotics class in the Middle School. (3T174:15-19). Outside of STEM, the District has other supervisors who are responsible for developing curriculum in the subject matters they supervise. (3T191:13-18).

Testimony of Marcy Marshall

Marcy Marshall, who has spent her entire professional career in the District, is in her fifth year as Lakewood High School's principal, a building with approximately 84 teachers and 1200 students. (3T200:4-8, 10-25; 3T201:1-4 3T205:22-24;

⁸ While Ms. Spitz-Stein testified that this cut was due to budget constraints, she also stated that she is not involved in the creation of the District's budget. (3T196:4-7).

3T229:1-10). She describes the high school's demographics as approximately 85% Hispanic, with the rest being African American and a small percentage Caucasian. (3T202:12-14). Although 75% of the students come from non-English speaking families, less than 15% are poor English speakers. (3T238:6-11). The high school graduation rate was 75.4% for the 2016-2017 school year and is an improvement over years past, though below the state average. (3T211:10-25). She feels that the ELL population contributes to the lower than state average graduation rate given that they "arrive [to the District] with barely any schooling." (3T213:6-12). Ms. Marshall stated that there has been consistent growth in her students' PARCC scores, though describes it as minimal. (3T245:10-13). She characterizes Lakewood High School as struggling and explains she feels this way based on language barriers, attendance rates, and test scores. (3T240:12-19).

Ms. Marshall testified that the high school has "a successful" athletics program and that athletics are very important to the students as they get out of high school at 1:30 p.m. and it allows them to participate in a positive environment. (3T213:22-25; 3t233:2-17). Much of the athletics were cut in the prior year's budget; however, they were restored when the Township provided the District money to do so. (3T214:3-7; 3T215:15-16; 3T216:2-6).

When describing her staff, she estimated that approximately 35 of the 84 teachers are not tenured, and in the 2017-2018 school year, she had 9 first year teachers, 10 second year teachers, and approximately 15-20 third year teachers. (3T229:13-23). At the fourth year, teachers are tenured. (3T229:24-25). Prior to the start of the 2017-2018 academic year, approximately 14 teachers, both tenured and non-tenured, left their positions at Lakewood High School, and Ms. Marshall opined that they left for more stability and better pay. (3T230:8-20). Seventy teachers remained at the high school, and the fourteen that left were replaced. (3T247L3-13). Ms. Marshall characterized teacher retention as a problem for the high school and testified that salaries are on the lower end of the county. (3T230:24-25; 3T231:1-9). Due to teachers leaving, Ms. Marshall spends a bulk of her summers hiring and training new teachers. (3T231: 22-25; 3T232:1-5). She characterized teachers leaving as negative for the students because the students need consistency and stability in these relationships. (3T232:9-14).

Ms. Marshall testified that there are four curriculum supervisors district-wide, including a STEM supervisor, ELA and Social Studies supervisor, ELL/ESL World Languages and guidance supervisor, and a Special Education supervisor. (3T234:5-11). When she started working at the high school, eight years prior, there were more content supervisors. (3T234:12-14). She argues

that having fewer content supervisors than she would like makes it harder for her and the three other administrators at the high school to give teacher feedback on content, as opposed to instruction. (3T235:15-20). Ms. Marshall also stated that she would love to have remediation specialists, and that "any school that has struggling students would love another teacher." (3T240:7-11).

Ms. Marshall indicated that the high school has approximately 12-13 special education teachers on staff for a special education population of approximately 80-85 students. (3T240:25; 3T241:1-9). They have resource pullout support for Math and ELA in every grade level, as well as for Science and Social Studies in 9th and 10th grades. (3T242:11-14). Lakewood High School provides in-class support for Math and ELA at every grade level and for Science and Social Studies in 9th grade. (3T242:14-17).

She testified that during the 8 years that she has been present in the high school in some capacity, it has lost some programs, specifically in-house vocational programs. (3T203:23-25; 3T204:1-15). Some of the shop programs were taken away and the rooms they occupied repurposed for administrative offices. (3T204:25; 205:1-7). That being said, the high school has certified in-house programs in culinary arts, TV production, digital photography, fashion design, business office automation,

and an Army ROTC program. (3T205:8-13; 3T253:24-25; 3T254:1-9). To support these programs, the high school is equipped with new culinary classrooms, a TV production studio, full Mac Labs, a Media Center, a Recording Arts Studio, and a Digital Photography studio. (3T256:13-24). Approximately 100-120 of the juniors and seniors (out of approximately 500) go to a shared time program at the county vocational school to receive technical education. (3T227:15-25; 228:1-3).

Ms. Marshall testified that the chronic absenteeism rate is higher than the state average and surmised this was because many of her students work at night and high school starts early in the morning. (3T208:16-22). In order to combat absenteeism and keep students interested in attending school, the high school has developed the Career Academies Program. (3T261:1-9). Students can divide into smaller cohorts based on either an interest in STEM or Business. (3T261:10-25; 3T262:1-8).

The high school offers classes to meet all of the graduation requirements and provides multiple AP offerings across many subjects, though most of the scores on AP tests are 3 and below. (3T258:11-25; 3T259:1-25; 3T260:1-25). Other offerings at the high school include Marine studies and a Horticulture program, including a new greenhouse on campus. (3T262:9-18). Multiple art and music classes are also offered. (3T262:22-23; 3T263:19-21; 3T267:6-25). According to Ms.

Marshall, approximately half of the senior year students go to post-secondary schooling, though she feels many of them are not able to necessarily afford college right after high school or have to go back into the workforce after they have matriculated. (3T220-18-19; 3T226:1-5). Many of her students go to vocational programs, the military, or straight into the workforce after graduation. (3T219:21-23).

Testimony of Robert Finger

Mr. Finger testified that he has worked for Lakewood as the Interim Assistant Business Administrator ("ABA") since October 19, 2017, and prior to that, as the Business Administrator and Board Secretary between February 2008 and November 2010. (2T139:1-9).⁹ Although he reviewed Lakewood's annual audits from the 2013-2014 through 2016-2017 school years, he had no firsthand knowledge of what occurred in the District during that time. (2T141:11-142:5).

Mr. Finger testified that when he left Lakewood in 2010, it had a \$5 million budget surplus. (2T140:15-142:1). But the District began to go into deficit in 2013-2014, "and they are still in a deficit. The deficit is actually a little less, I think the high point was at 6 and a half million in deficit, and now officially June of 2017, it was down to about 4.3 million in

⁹ He was not employed by Lakewood between 2010 and October of 2017. (2T138:14-25).

deficit . . . [for 2016-17]." (2T142:8-15; 2T140:4-6). More specifically, he testified that after the State Monitors were installed in 2014, the deficit decreased. (5T145:19-25).

Mr. Finger indicated that the District has never gone without enough funds to balance its budget, receiving an \$8.6 million state aid advance loan for the 2017-2018 academic year, and that "officially the budget for 2017/2018 is a balanced budget." (2T143:6-8; 5T146:22-25; 5T147:1). He indicated that in creating its budget, the District first sets forth its revenues (including local revenues, tax levy, miscellaneous, and State aid from the State aid notice), and expenditures. (5T191:5-23). If expenditures are more than revenue, the difference is put on a line in the budget labeled "DOE State Advances" and that number is then requested from the State as a loan. (5T191:5-23) He estimated that the District would face a deficit of between \$17 and \$23 million for 2018-2019, not including any salary increases, or the potential repayment of state aid advances.¹⁰ (2T191:23-192:4). However, Mr. Finger testified that "[t]here's always a way to get the [budget] numbers down." (2T193-13).

When asked directly what he thought was the problem in the District, he acknowledged that "I'm not an expert on how the formula works," but felt that it was a revenue problem.

¹⁰ There was limited testimony on the repayment status of the loans, however it was speculative. (5T186:17-187:7; 5T187:21-188:5).

(2T196:21-22; 2T196:23). He identified the 2 percent levy cap on property taxes as crippling the District's ability to increase revenue. (2T193:10-22). He acknowledged that the decision to impose this cap was a legislative one. (5T157-25-158:2). He then opined that if trends continue as they are, the District would need to "trim around the edges" of its budget every year. (2T193:20-194:2). He further acknowledged that the Lakewood Board of Education sets the school tax rate within the parameters of the two percent levy cap but did not address how it compared with other districts in the State. (5T178:2-5).

Mr. Finger acknowledged that all the families in the District pay school taxes, not just those who have children attending public schools. (2T200:8-22). He continued: "So there's a far higher pot of money available, okay, towards putting in as the tax levy, okay, and obviously if there's more that could come from the local side, then there's less that comes from the state side." (2T200:8-22). Further, voters can elect to exceed the two percent levy cap, and "go out for a separate proposal as long as it doesn't affect T and E. And as long as it's not a mandated expenditure." (5T159:6-11; 5T158:10-17). He was aware that the voters of Lakewood rejected the question to exceed the levy cap to cover costs of courtesy busing. (5T159:12-18).

Mr. Finger testified extensively about how the Lakewood Student Transportation Authority ("LSTA") operates, and its impact on the District's budget. He acknowledged that the Commissioner must review the LSTA pilot program next year to determine whether or not it should be renewed and felt that it should be renewed. (5T151:4-25; 5T152:1-9). According to Mr. Finger, if a district cannot provide busing for a student, every school district in the state must pay aid-in-lieu in the amount of \$1,000 to the parents. (2T148:2-4). Pursuant to statute, Lakewood must pay \$1,000 for each student being bussed by the consortium. (2T148:6-10). If anything is left over after paying for mandated transportation, then that money may be used to cover the cost of courtesy busing for nonpublic students. (2T147:9-22). He further explained that the state provides aid for transportation in two ways. (2T175:5-4). The State calculates aid based on the number of mandated students transported, which is part of a district's general fund budget. (2T175:5-13). Then for non-public students, the State reimburses the district for \$290 per student of the \$1,000 aid-in-lieu amount. (2T175:14-176:8). Mr. Finger testified that the total state aid for all transportation is around \$10 million. (2T182:2-5). However, if at the end of the year, the LSTA ends up bussing more students than they had in the prior year, then the State would provide Lakewood with additional aid because aid

is initially calculated in reference to the prior year's bussed student numbers. (2T179:2-15; 5T174:1-177:4).

As Interim ABA, Mr. Finger was working on tightening controls in the special education office to ensure that the District is not paying more than it should. (2T144:2-19). Mr. Finger testified that Lakewood spends a larger part of its budget than other districts on special education and transportation. (2T160:1-16; 2T160:17-20). In reaching this conclusion, he compared Lakewood's tuition and transportation expenditures to several other districts of different sizes, namely Freehold Borough, Jackson Township, Brick Township, and Toms River Regional.¹¹ (2T159:14-160:16). He also drew from his own experience working in the districts of Teaneck and Keansburg. (2T160:1-2). Mr. Finger opined that tuition and transportation costs could range between four percent of the total budget each for tuition and transportation, to eight percent each in the districts he had considered. (2T160:1-16). For Lakewood, he estimated that tuition and transportation would

¹¹ Mr. Finger was not offered as, or qualified as, an expert witness in this matter. He testified that he drew the comparison to select other districts for a "recent budget presentation," but did not explain his rationale for selecting these particular districts as opposed to other districts, though noted that a few were similar in size, and one of the districts he analyzed was similar demographically in terms of its Hispanic population to Lakewood. (2T159:14-160:16, 21-14).

make up approximately 35-38 percent of the District's budget in the upcoming year. (2T160:17-20; 2T172:1-8).

Mr. Finger arrived at his budget projections by inputting data into the District's budget projection software. (2T170:2-4). He acknowledged that safety measures, such as building bridges over Route 9 or installing more crossing guards, could be implemented in Lakewood that could reduce the number of hazardous routes and thus projected transportation costs. (5T157:1-13). He testified that in making his projections, he included the costs for transporting special education students in both the tuition and transportation categories—so he double counted these costs, in the amount of \$3,063,195. (2T183:1-19). Acknowledging this, he projected costs for special education and transportation to be approximately \$78 million for the 2017-2018 school year,¹² where the total operating budget is predicted to be \$144 million. (2T183:16-24). He then conceded that the District gets state aid for special education as well. (2T184:4-15). When asked how all of the above affected the creation of a budget for public school students, he responded "I really have no answer for that. I'm not an educator." (2T186:9-15).

¹² Elsewhere, he testified that the total special education and transportation costs, not counting special education twice, would be about \$88 million. (2T189:14-18).

Testimony of Dr. Danielle Farrie

Dr. Danielle Farrie is the research director at the Education Law Center ("ELC"), a non-profit legal advocacy firm that works to enforce the rights of public school students across New Jersey and nationally. (4T5:14-20). She was qualified as an expert in educational funding. (4T15:25-16:1).

Dr. Farrie described the SFRA as a school funding formula that "looks at the unique population of each school district and determines the funding level that is required to support those students to meet the state standards." (4T16:25-17:3). That funding level is called the "adequacy budget." (4T17:8-9). Once the adequacy budget is determined, the formula looks at how much the local municipality can raise to support the schools (the "local fair share"). (4T17:5-7). It then takes the difference between the adequacy budget and the local fair share to determine a district's equalization aid. (4T17:7-8 & 18-19; 4T29:8-11). Beyond equalization aid, Dr. Farrie testified at length about other categories of aid districts receive, including special education categorical aid. (4T17:24-31:22). Under the SFRA, one-third of a district's special education costs are funded directly by the State through special education categorical aid, while the remaining two-thirds are accounted for in the district's equalization aid. (4T18:2-10).

Dr. Farrie recognized that the New Jersey Supreme Court has declared the SFRA to be constitutional (4T56:24-57:12), and that the SFRA is "a national model of school funding" (4T81:3-5). However, she opined that the SFRA is not adequate for Lakewood because of the community's unique demographics. (4T82:8-10; 4T57:23-58:1). Specifically, while in most districts the majority of students attend public schools, the majority of students in Lakewood attend private schools. (4T58:3-12). In Dr. Farrie's view, those unique demographics lead to mandated transportation and special education costs that "eat[] up all other areas of the budget" and cause Lakewood to be in a state of "constant fiscal distress." (4T81:3-12; 4T76:14-23). According to Dr. Farrie, Lakewood's per pupil expenditures are currently less than the average spent by other K to 12 districts with student populations above 3,500. (4T78:9-22). She also noted that, as of 2014, Lakewood's performance on statewide assessments relative to other districts had decreased. (4T80:8-19; 4T103:7-9). However, she does not know if or how Lakewood's relative performance has changed since 2014. (4T104:1-3).

With regard to special education, Dr. Farrie testified that Lakewood has comparatively high special education costs. (4T62:6-7). In her view, there are three factors underlying those high costs: (1) the classification rate in Lakewood is higher than the State average because students in need of

special education services who might otherwise attend a private school are "essentially opting into the public education system at a higher rate than their non-special ed counterparts" (4T62:8-15; 4T73:1-5); (2) Lakewood has a higher than average number of students in the highest cost disability categories (4T62:25-63:12); and (3) Lakewood places a higher than average number of students in out-of-district placements,¹³ and those programs are more expensive (4T64:4-17; 4T67:24-68:8). According to Dr. Farrie, these factors stress the District's budget because the SFRA's calculation of special education aid "is based on an expected population of an average classification rate with average disability classifications with average disability placements." (4T74:15-23).

Dr. Farrie did recognize that students in out-of-district placements are public school students counted in the District's enrollment numbers and thus are accounted for in the District's special education categorical aid, equalization aid, security aid, and extraordinary aid, if appropriate. (4T93:11-94:11). She acknowledged that Lakewood does receive extraordinary aid for special education students who have expenditures over \$40,000

¹³ Dr. Farrie recognized that, by definition, districts are going to be above the average classification rate of 14.92%, and so Lakewood is not unique in that regard. (4T94:23-95:9; 4T113:13-17). When asked if there are any other districts that would be considered an "outlier," as opposed to just above average, Dr. Farrie was not sure. (4T114:3-5).

for in-district placements and over \$55,000 for out-of-district placements. (4T87:19-88:17; 4T89:21-25).

With regard to transportation, the District must, pursuant to statute, provide mandated transportation for both public and non-public students. (4T75:11-12). According to Dr. Farrie, Lakewood's transportation costs are an issue because they "far exceed even a fully funded SFRA." (4T75:24).

Dr. Farrie noted that the District is spending "somewhere around \$40 million in excess of what the formula provides for both special education and transportation." (5T86:3-7). She therefore believes that there must be a change in the funding structure and the way aid is allocated to Lakewood that takes into account Lakewood's unique demographics. (4T81:23-25; 4T82:1-7).

Testimony of David Shafter

David Shafter has been a State Monitor in Lakewood for the past three years, installed by the Department due to the deficit in the school budget. (5T5:21-25; 5T6:1-10;24; 5T8:17-23). He has a bachelor's degree in Business Education from Temple University, and a Master's in Science in Accounting from Penn State University. (5T7:2-4). Further, he is a Certified Public Accountant, Certified School Business Administrator, and a Qualified Purchasing Agent. (5T7:4-6). Prior to coming to Lakewood, he served as a Business Administrator in Camden City,

East Windsor and Willingboro, as well as a State Monitor in Willingboro, Beverly and Camden City. (5T7:9-25; 5T8:2-8).

As a State Monitor, he is "intimately involved . . . in the finances of the School District" and has approved two budgets that the Lakewood Board of Education would not approve for the 2016-2017 and 2017-2018 school years. (5T10:1-6; 5T22:6-9; 5T22:20-24). At the time Mr. Shafter was installed in Lakewood "there was a big problem with the financial records." (5T21:5-7). He estimated that when he first came in the financial records were approximately 50% accurate. (5T73:13-18). Additionally, the Comprehensive Annual Financial Report ("CAFR") that the District was required to file each year had a significantly high number of findings. (5T74:11-25; 5T75:1-11). According to Mr. Shafter, "the number of findings usually reflects the—the abilities of the business office to properly run the dis—the finance of the district." (5T75:4-6). There were no purchase orders in place for students the District had determined to send to out of district placements and therefore "there was no way of knowing how much was being spent." (5T31:8-13). By not having purchase orders, "students may have moved out of the District, but there was no reduction in the purchases order for the private school of the handicapped." (5T13-15).

According to Mr. Shafter, the District was additionally not keeping an accurate position control roster showing the names of

staff, what they did, and what accounts they were charged to. (5T72:8-13). There were also in-district students for whom the District was not applying for extraordinary aid, meaning that additional revenue was not being collected. (5T77:1-9). Mr. Shafter testified that "there was no way of knowing what was going on" and "when you would look at the financial records, you really couldn't believe whether they were accurate or not." (5T31:16-21). Inaccurate or unreliable financial records would affect the District's ability not only to track its finances, but also to plan for future expenditures. (5T73:20-25; 5T74:1-2). Part of his job was to correct financial practices and he believes they are currently corrected. (5T32:1-3). The number of findings reported in the CAFR have gone down since Mr. Shafter's installation in Lakewood as a State Monitor. (5T75:12-25).

The first Lakewood budget with which Mr. Shafter was involved in was for the 2015-2016 academic year. (5T11:1-3). In October or November of 2015, he and the lead State Monitor, Michael Azzara, had determined there would not be sufficient funds to continue to pay for non-public student courtesy bussing for the entire year. (5T11:10-23). A referendum was put to the Township to assist in paying for the courtesy bussing and the referendum "was resoundingly defeated." (5T11:23-25; 5T12:1). Due to the referendum failing, courtesy bussing was going to stop on or around February 1, 2016, but the Commissioner,

feeling that it was too dangerous¹⁴ to just stop the bussing, directed Lakewood to continue courtesy bussing and provided a \$4.5 million advance in State Aid, essentially a loan, to the District to pay for it. (5T12:9-17; 5T13:3-5, 9-13).

For the 2016-2017 budget, the Department once again issued Lakewood a state aid advance, this time of approximately \$5.4 million. (5T15:16-25; 5T16:1-3). Mr. Shafter commented that had the Department not stepped in and provided Lakewood the loan, teachers would have been laid off and class sizes would have increased. (5T16:6-9). Mr. Shafter attributed the deficit in the 2016-2017 budget to increases in the costs of programs coupled with state aid being "substantially frozen" and tax increases limited to two percent by statute. (5T16:18-22; 5T83:21-24). Any tax increases above the two percent levy cap would have to be approved by the community via special question.¹⁵ (5T81:8-11).

Mr. Shafter went on to explain that the LSTA was created by the Legislature, and, he believes, with the support of the community, to provide the non-public students residing in the District with bussing. (5T78:18-25; 5T79:1-4; 5T83:25; 5T84:1-2). "[T]ransportation costs increased because the District was responsible to give the LSTA \$884 a student." (5T16:24-25;

¹⁴ Mr. Shafter indicated that the Township could add sidewalks or have more crossing guards in order to reduce the number of hazardous routes. (5T88:18-21).

¹⁵ See N.J.S.A. 18A:7F-39(c).

5T17:1-2; 5T79:22-25; 5T80:1-8). Although the State reimbursed the District the difference between \$730 and \$884, at the time, it was costing less than that amount per student for the contracted transportation. (5T17:2-7). Increased numbers of non-public students mandated to be bussed pursuant to statute also increased costs to the District. (5T80:13-15).

The LSTA, along with the increased number of students sent to private schools for the handicapped, teacher pay raises, and health insurance increases, equaled more than what the increase in State Aid and local taxes could handle. (5T17:7-16). Mr. Shafter characterized the 2016-2017 budget as being "cut down as low as possible" and therefore, the State issued the advanced State Aid to make up for the shortfall. (5T19:3-8).

In March 2017, as the 2017-2018 budget was being developed, there was once again a deficit of approximately \$13 million. (5T24:10-15). Lakewood's Superintendent and Mr. Shafter would not recommend the budget with such a deficit and the kinds of cuts that would entail. (5T24:21-25; 5T25:1-15). The State issued another state aid advance of approximately \$8.5 million and allowed the District to waive a year of loan and audit paybacks (approximately \$2 million). (5T25:21-25; 5T25:1-2). Although cuts to athletics and non-public related services remained, Mr. Shafter characterized the 2017-2018 budget after

the loan as "sufficient [sic] to deliver the services to the students." (5T26:12-21).

Mr. Shafter testified that he believed there are "insufficient revenues to cover the required expenditures," and further explained that that is "why we [the District] have advanced State aid" from the Department to cover any shortfall. (5T33:4-9). He testified that the monitors have cut what they could and have both initiated cost savings measures such as in-house transportation for public school students, bus schedule tiering, and hiring of teachers in order to open in-house special education classrooms. (5T18:14-20; 5T20:3-25; 5T34:2-12; 5T37:1-5). He further noted that the financial problem in Lakewood is a combination of "the non-public population has been increasing about ten percent a year," increasing transportation costs to the District, categorical aid and equalization aid being frozen, and the inability to raise taxes more than two percent each year. (5T39:4-6; 18-20; 5T41:24-25; 5T42:1-7). Mr. Shafter acknowledged that the amount of categorical aid and equalization aid a district receives is a legislative determination, set by the appropriations act annually. (5T83:8-20). The restrictions on the taxation cap is also a legislative decision. (5T83:21-24).

Mr. Shafter, when asked, stated that he believes the solution for Lakewood is increased revenue, through either

increased State aid or increases in local taxes. (5T91:25; 5T92:1-6). He also believes the Township to have a surplus in its budget. (5T92:10-12). While the Township is not required to use the money on the school system, he indicated that it could be used to fund the schools. (5T92:13-15). Hypothetically, he noted that increases in revenue could happen by obtaining full funding for all districts statewide, or coming up with a completely new funding formula, again applicable to all districts. (5T93:2-7). Both of these fixes would have to come directly from the Legislature. (5T100:1-10).

Testimony of Mike Azzara

Since May 2014, Mr. Azzara has been the Lead State Monitor in Lakewood, overseeing the District's finances and business operations. (5T106:4-9; 5T139:11). He testified that, while there is "an overall fund deficit" in Lakewood this year, there is no deficit in the operating budget. (5T112:22-25).

With regard to Lakewood's finances, Mr. Azzara testified to his opinions¹⁶ that Lakewood has "a revenue problem" and does not have "a spending problem." (5T107:17-20). In explaining those opinions, Mr. Azzara stated:

Well, I've been there for four years. So, we've done everything we can to try to balance the budget. And we're pretty much down to what we, you know, just what we need

¹⁶ Mr. Azzara testified as a fact witness and was not qualified as an expert.

to meet T and E and get the Superintendent and the County Superintendent to sign off on the budget and certify that it's adequate.

[5T107:25-108:5.]

More concisely, Mr. Azzara stated his belief that, while the District "could always look for more economies" (5T109:8-10), they have made "every reduction that's possible in order to maintain a T and E education" (5T108:22-25).

Mr. Azzara largely attributed Lakewood's budgetary issues to the approximately 30,000 children in the municipality attending non-public schools, who are entitled to transportation and certain special education services from the District. (5T120:24-121:6). He also expressed his opinion that such a large non-public school population strains the taxpayers because they have to support other municipal services, such as police, firefighters, and trash removal. (5T123:13-22). Mr. Azzara recognized that Lakewood does "have a big tax base" (5T133:2-3) that "is spread out over many more people than the people who send their children to the public school" (5T132:5-7).

While stating his opinion that Lakewood "need[s] more revenue" (5T129:21-23), Mr. Azzara recognized: "If that comes from the taxpayers or it comes from the State, that's really a question for the legislature and the courts, not me" (5T129:23-25). In Mr. Azzara's words: "[T]he legislature could make any decision it wanted in terms of how to raise the additional

money." (5T130:5-7). One difficulty the District faces in raising revenue is that it is "tapped for its property tax. And it can't raise any more than it does. It goes to cap." (5T130:2-4). As Mr. Azzara explained, in order to allow taxes to be increased in Lakewood, the Legislature would have to remove or revise the property tax cap because the levy cap is a legislative decision. (5T130:10-13; 5T136:6-8). Without such action by the Legislature, "only the local voter can raise taxes above the cap." (5T130:18).

Beyond that, while "any increase in the adequacy budget would be totally funded by State aid" (5T126:20-127:6), a District's equalization aid that is appropriated is a legislative decision (5T135:22-25). For the amount of equalization aid appropriated to be changed, that would have to be done by the legislature, or, according to Mr. Azzara, the Supreme Court. (5T136:9-11). According to Mr. Azzara, if the overall budget of the State remains the same, in order for Lakewood to receive more equalization aid, "[t]hat money would have to come from other districts." (5T139:24-25; 5T140:21-25). That is because "the multipliers are basically the product of how much State aid is appropriated by the legislature." (5T140:7-9).

Finally, Mr. Azzara recognized that certain mandatory expenditures may only be changed by the Legislature. (5T109:1-

17). As Mr. Azzara explained, many special education expenses are "all pretty much governed by law" (5T109:13016) and, with regard to transportation, the District is required by statute to pay \$1,000 for every pupil it is mandated to transport to a statutorily-created non-public consortium. (5T109:2-4).

Following the conclusion of Finger's testimony, Petitioners rested their case. Subsequent to the last scheduled hearing date, Petitioners attempted to enter into stipulations of fact with the Respondents and sought to enter numerous documents into evidence. Following a conference on the record, the ALJ resolved Petitioners' outstanding evidentiary issues and set a briefing schedule for the instant motion. Respondents now file this Motion to Dismiss the Amended Petition.

LEGAL ARGUMENT

The Amended Petition should be dismissed because the evidence presented by Petitioners cannot sustain a judgment in their favor. First, much of the relief Petitioners seek is not available in, or properly before, the present forum. Second, to the extent Petitioners seek a declaration that Lakewood is receiving an unconstitutional level of funding, Petitioners have not established that they are being denied T&E, and so any such claim should be dismissed.

The standard for a motion to dismiss at the close of Petitioners' case in the OAL is the same as a motion for judgment of involuntary dismissal in a court of law. Syvertsen v. Scotch Plains-Fanwood Bd. of Educ., 92 N.J.A.R.2d (EDU) 251 (OAL, December 1991), Aff'd, 92 N.J.A.R.2d (EDU) 393 (State Bd. of Educ., June 1992). The test is identical to that applied in the judiciary, and is whether all of the evidence together with the legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. Ibid., citing R. 4:37-2; Dolson v. Anastasia, 55 N.J. 2 (1969).

POINT I

**THE AMENDED PETITION SHOULD BE DISMISSED
BECAUSE THE REMEDIES SOUGHT ARE NOT
AVAILABLE IN THIS PROCEEDING.**

Petitioners request a variety of numerous, inconsistent remedies. Generally, they have asked the Commissioner to: (1) undertake certain legislative functions (Counts V and VI); (2) use his authority to advocate for certain policy positions advantageous to Lakewood (Counts I through VI); (3) issue various declaratory rulings (Counts I, II, III, IV, V, and VII); and (4) award "any and all administrative remedies" without articulating what that relief might be (Counts II, III, IV, and V). In responses to contention interrogatories aimed at narrowing the inconsistent requested remedies, Petitioners

stated that "[t]he primary relief sought is for the Commissioner to recommend legislation to adjust the SFRA to account for all of the children in Lakewood" (Responses to Contention Interrogatories, Ex. A, p.10).¹⁷ Petitioners then acknowledged that:

The primary relief is inconsistent with several interim recommendations. These include full funding under the present SFRA (MSD, paragraph 4, page 42), more special education categorical aid pursuant to N.J.S.A. 18A:7F-55(g) (AP Count V, 27), and the current SFRA full transportation aid of \$9,027,679. (AP Count VI, 30).

[Ex. A, pp 10-11.]

Petitioners then sent correspondence to the Court on February 8, 2018, stating that:

Petitioners' only cognizable claim, despite the format of the petition, is that the SFRA is unconstitutional as applied to Lakewood, thereby depriving them of their rights to the benefits of a thorough and efficient educational system.

[Feb. 8, 2018 correspondence, Ex. B.]¹⁸

Despite multiple attempts to clarify what relief they are actually seeking, Petitioners have failed to do so and therefore Respondents will address these issues below.

¹⁷ A copy of this is attached to the Certification of Jennifer Hoff as Exhibit A.

¹⁸ A copy of this is attached to the Certification of Jennifer Hoff as Exhibit B.

A. The Amended Petition Improperly Seeks Relief That Can Only Be Granted by the State Legislature.

In Count VI of the Amended Petition, Petitioners seek additional State education funding for the District. Specifically, they ask the Commissioner to provide \$9,027,679 in transportation aid to the District. (Amend. Pet. at Count VI). Further, in Count V, Petitioners ask the Commissioner to provide additional special education categorical aid pursuant to N.J.S.A. 18A:7F-55(g). (Amend. Pet. at Count V). The power to expend and appropriate monies from the State treasury lies exclusively with the Legislature. N.J. Const. art. III, § 2, ¶ 2 ("No money shall be drawn from the State treasury but for appropriations made by law."). Thus, once the Governor delivers the Budget Message, the Legislature spends the next several months conducting budget hearings to consider and prioritize the State's fiscal needs. Concurrently, the State Treasurer continually revises and updates the current and anticipated revenue projections based on tax receipts and other information. Before the fiscal year expires, the Legislature must pass an Annual Appropriations Act for the upcoming fiscal year. Once signed by the Governor, the Annual Appropriations Act controls all state spending for that fiscal year.

School funding is part of this budget process. Within two days of the Governor's Budget Message, the Commissioner must

notify each public school district of the anticipated amount of State aid to be allocated for the upcoming fiscal year. N.J.S.A. 18A:7F-5. But because of the Legislature's appropriation authority, no allocation is absolute until the Annual Appropriations Act is enacted.

The Appropriations Clause is the "center beam of the State's fiscal structure." City of Camden v. Byrne, 82 N.J. 133, 146 (1980); see also, Burgos v. State, 222 N.J. 175, 207 (2015). It reflects "a fundamental judgment to centralize and simplify state fiscal operations." City of Camden, 82 N.J. at 146. "The Appropriations Clause 'firmly interdicts the expenditure of state monies through separate statutes not otherwise related to or integrated with the general appropriation act governing the state budget for a given fiscal year.'" Burgos, 222 N.J. at 208 (citing City of Camden, 82 N.J. at 146). "A definite legislative intent as reflected in the general appropriations laws necessarily supersedes any previously expressed legislative desires at least for the duration of the particular appropriation act." City of Camden, 82 N.J. at 154. And "[t]here can be no redress in the courts to overcome either the Legislature's action or refusal to take action pursuant to its constitutional power over state appropriations." Id. at 149.

"Efforts to dedicate monies through legislative acts other than the annual appropriations act have no binding effect. They

are read as impliedly suspended when contradicted by the budgetary judgment of the presently constituted Legislature acting in concert with the Governor in their constitutionally prescribed budget formation roles." Burgos, 222 N.J. at 183. Because it is the Legislature that appropriates funds, Petitioners' request for additional special education and transportation categorical aid directly from the Department must be denied as such relief is not available in this forum. See City of Camden, 82 N.J. at 149; (5T83:8-20; 5T130:5-7).

Further, in Count V, Petitioners ask for additional special education categorical aid pursuant to N.J.S.A. 18A:7F-55(g), which provides that "[a] school district may apply to the commissioner to receive additional special education categorical aid if the district has an unusually high rate of low-incidence disabilities" This is relief that cannot be granted in this forum. Petitioners fail to recognize that this provision clearly indicates a school district needs to apply for the aid prior to being able to receive additional funds. There has been no evidence to suggest that Lakewood has applied for any sort of additional categorical aid pursuant to this provision. Petitioners' grievance therefore is with Lakewood and not Respondents. There is no relief that Petitioners can possibly receive from this forum with regard to Count V. Further, any additional special education aid must be appropriated and once

again falls under the control of the Legislature regardless of any recommendations or requests from the Commissioner.

Therefore, to the extent that the Amended Petition seeks relief in the form of additional State Aid from the Commissioner or changes in legislation, the claims must be dismissed.

B. Petitioners' Requests for Declaratory Rulings Are Not Properly Before the OAL and Should Be Dismissed.

Petitioners request declaratory rulings in all counts except for Count VI, but have improperly sought them through an Amended Verified Petition of Appeal. Because the Amended Petition fails to satisfy the requirements set forth in N.J.A.C. 6A:3-2.1, Petitioners' requests for declaratory and consequential relief should be dismissed.

Petitioners filed an Amended Verified Petition of Appeal under N.J.A.C. 6A:3-1.3; they have not filed a Petition for Declaratory Ruling under N.J.A.C. 6A:3-2.1. Unlike a petition of appeal, which requires that a petitioner include "a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws," N.J.A.C. 6A:3-1.3(a), a petition for declaratory ruling is much more limited in scope. See N.J.A.C. 6A:3-2.1(a). It does not deal broadly with all conflicts that arise under the school laws, but narrowly involves a request for "a ruling with respect

to rights, responsibilities and status arising from any statute or rule within the jurisdiction of the Commissioner." Ibid. (referencing N.J.S.A. 52:14B-8).

Interested parties may petition for a declaratory ruling, but "[t]he determination to entertain such petitions . . . shall be within the sole discretion of the Commissioner." N.J.A.C. 6A:3-2.1(a). Rather than reflect only the petitioner's viewpoint, a petition for declaratory ruling "shall reflect adverse positions on the statute or rule in question by the parties in interest." N.J.A.C. 6A:3-2.1(a)(1). Additionally, a petitioner seeking a declaratory ruling may not seek consequential relief arising out of the sought-after declaratory ruling. Ibid. Finally, a petition for declaratory ruling "may not be based on underlying facts which are future, contingent, uncertain or disputed." Ibid.

The Amended Petition does not satisfy these requirements. First, Petitioners do not clearly identify the parties-in-interest. While Petitioners represent one side of their dispute, they do not specify whether their grievances are with the Lakewood Board, the District, the Department, the Commissioner, or some other entity. Further, the Amended Petition includes no discussion of any adverse position against which Petitioners' own position should be juxtaposed. See N.J.A.C. 6A:3-2.1(a)(1) (requiring that a request for declaratory judgment reflect

adverse positions). Nor do the requests for declaratory rulings seek a determination of "rights, responsibilities and status" arising from the operation of a statute or rule under the Commissioner's jurisdiction, as required. Ibid.

Finally, many of Petitioners' requests for declaratory relief are coupled with requests for consequential relief arising from the declaratory ruling. This consequential relief is prohibited by regulation. N.J.A.C. 6A:3-2.1(a)(1).

Next, the specific declaratory rulings sought by Petitioners are not of a nature that can be granted by the Commissioner because they are vague. For example, in Count I, Petitioners seek a declaratory ruling but do not specify the exact nature of the declaratory relief sought. (Amend. Pet. at p.9). In Count VII, Petitioners request a declaratory ruling "that all Lakewood students are entitled to the same services for which students similarly situated elsewhere in New Jersey are entitled." (Amend. Pet. at p.32). Further, they specify that the ruling should "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." (Amend. Pet. at p.32). Petitioners appear to be requesting that the Commissioner affirm the broad principle of equality under the law, rather than determine rights, responsibilities, and

status arising under a statute or rule. Such vague, ambiguous, and overly broad requests must be dismissed.

In Counts III and IV, Petitioners seek to have the Commissioner issue a declaratory ruling that Lakewood should be classified as an "urban district" for funding purposes, (Amend, Pet. at ¶65), and that such classification should be retroactive, (Amend, Pet, at p.22). Rather than seeking legislative solutions to their concerns about educational funding, Petitioners are instead improperly seeking a declaratory ruling on these Counts. Essentially, they are asking the Commissioner to change the meaning of the State's educational funding statutes as they relate to Lakewood. Because Petitioners fail to satisfy the requirements for a declaratory ruling, their requests for such rulings should be dismissed.

For the above reasons, Petitioners' requests seeking relief only available in the Legislature, as well as their requests for multiple declaratory rulings, must be dismissed.

POINT II

PETITIONERS HAVE NOT SHOWN THAT LAKEWOOD IS FAILING TO PROVIDE THEM WITH A THOROUGH AND EFFICIENT EDUCATION.

Petitioners cannot succeed on their only claim properly before the OAL--whether the level of funding received by Lakewood is constitutional--because they have not presented any

evidence that they are being denied T&E. The T&E Clause of the New Jersey Constitution requires the State Legislature to "provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State" N.J. Const. art. VIII, § 4, ¶ 1. The Legislature has recognized that constitutional obligation, see, e.g., N.J.S.A. 18A:7A-14a(a); N.J.S.A. 18A:7F-44, and has, in turn, explained that "[t]he breadth and scope of such a system are defined by the Legislature through the commissioner and the State board . . . so as to insure quality educational programs for all children." N.J.S.A. 18A:7A-14a(b) (referencing N.J.S.A. 18A:7F-43 et seq.).

Petitioners have not established that Lakewood is unable to provide its students T&E. The New Jersey Supreme Court has recognized that the Core Curriculum Content Standards ("CCCS") embody the substantive standards that define the content of a constitutionally sufficient thorough and efficient education. See Abbott v. Burke, 149 N.J. 145, 168 (1997) (hereinafter "Abbott IV"), Abbott v. Burke, 199 N.J. 140, 149 (2009) (hereinafter "Abbott XX"). The most-recent revision of the CCCS resulted in their revamping as the New Jersey Student Learning Standards ("SLS"), which "specify expectations in nine academic content areas" and set forth "[i]ndicators at benchmark grade levels . . . to further clarify expectations for student

achievement." See N.J.A.C. 6A:8-1.1(a)(1) & (2). The delivery of the SLS, like the CCCS before them, is the hallmark of T&E. See Abbott XXI, supra, 206 N.J. at 420-22.

Not one of Petitioners' witnesses testified that Lakewood was not providing T&E in the 2017-2018 school year, or that Lakewood failed to provide its students T&E in any school year since the Amended Petition was filed. In fact, the evidence presented supports the opposite conclusion. Mr. Azzara expressly stated that the District's budget for the 2017-2018 school year does contain what the District needs to provide T&E. (5T107:25-108:5; 5T108:22-25). Mr. Shafter stated that the 2017-2018 budget, after the state aid advance, was "sufficient . . . to deliver the services to the students." (5T26:12-21). Ms. Spitz-Stein testified that, at least in the areas of Math and Science, the District has and is implementing curricula consistent with the SLS. Ms. Winters, Ms. Spitz-Stein, and Ms. Marshall all testified to the extensive list of opportunities available to Lakewood's students, not only in basic skills and requirements, but in access to vocational education, technology, and the arts. See, Bacon v. N.J. Dep't of Educ., No. 4-03, State Bd. Dec. slip. op. at 29 (Jan. 4, 2006), citing Abbott v. Burke, 119 N.J. 287, 359-362 (1990).¹⁹ While of course personnel from Lakewood,

¹⁹ A copy of this decision is attached to the Certification of Jennifer Hoff as Exhibit C.

just as personnel from any district, can think of additional programs they would like to offer and additional staff they would like to hire, this does not equal a deprivation of students' constitutional right to T&E. There is a difference between not having the school system one wants versus having a school system that is in violation of the State constitution.

And, while the District performed below the State average on the PARCC assessment in Math last year, Ms. Spitz-Stein recognized that many of the District's schools did meet the State-set targets for 2017 and that the District's performance in fact improved from the 2015-2016 school year to the 2016-2017 school year. Additionally, Ms. Marshall and Ms. Winters also acknowledged that test scores were improving, rather than declining. Petitioners' school funding expert, Dr. Danielle Farrie, only looked at Lakewood's performance on statewide assessments up until 2014 to support her hypothesis that Lakewood's educational performance was in decline. (4T80-8-19;4T103:7-9). Her conclusions regarding Lakewood's educational state were four years out of date. Again, it may not be the fast progress that Lakewood or the Petitioners would like to see, but it is uncontroverted that Lakewood's test scores have been improving.

So too is the graduation rate, up 6% from when Ms. Winters became Superintendent in 2012. (2T112:10-15). The District met

most of its ESSA Accountability targets, and not one school in the District is in need of comprehensive or targeted support. (2T92:8-25; 2T93:1-9; 2T94:1-9). This is a credit to the District's and its students' efforts. Surely this steady and consistent improvement is not evidence of a district failing to provide its students with T&E.

Notably, Petitioners themselves did not testify, or present any specific evidence of any constitutional deficiencies in their education. Rather, Petitioners seem to rest their case on the fact that Lakewood has faced a budget deficit in each school year since 2014. However, contrary to Petitioners' apparent presumption, the District's budget deficit does not establish that the students of Lakewood are not receiving T&E. This is especially so where the Department ensured, without fail, that the District's deficit was filled through a state aid advance.

In fact, there is substantial evidence in the record that the Department and the Commissioner have and are taking substantial steps to ensure that Lakewood remains able to provide its students T&E. The Commissioner has used his extraordinary powers to install state monitors in Lakewood to remedy the financial issues that were rampant prior to their arrival. Further, the Department has provided financial assistance to Lakewood through state aid advances for the past three years in order to ensure that the District could provide

T&E to its students. As a direct result of the Commissioner's and Department's actions, RIF letters that were issued were able to be rescinded, and programs that were threatened to be cut restored. "[T]he constitution does not require relief every time the slightest deviation from T&E is found, or where there is clear evidence that a deficiency is being appropriately addressed and sufficient progress is being made toward its correction." Bacon v. N.J. State Dep't of Educ., No. 50-03, Comm'r Dec. slip op. at 137 (Feb. 10, 2003).²⁰

Petitioners have failed to demonstrate that the District is unable to provide T&E based on past and current levels of funding. One of Petitioners' central themes in their presentation was the idea that Lakewood has a revenue problem, and not a spending problem. (5T33:4-9; 5T107:17-20). When asked how he would solve that problem, State Monitor David Shafter indicated he would increase revenue, either through taxes or through increased state aid. Both State Monitors noted that taxes could not be increased because of a two percent cap on the taxes that could be levied on the community. (5T16:21-22; 5T39:19-20; 5T130:2-4). This restriction is legislative and mandated by statute. See N.J.S.A. 18A:7F-38(a); (5T83:21-24). Without any legislative action to lift the levy cap, Mr. Azzara

²⁰ A copy of this decision is attached to the Certification of Jennifer Hoff as Exhibit D.

noted that "only the local voter can raise taxes above the cap."
(5T130:18); see also, N.J.S.A. 18A:7F-39(c).

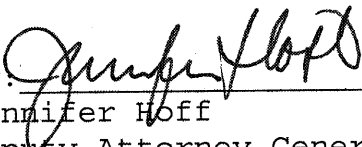
Because Petitioners have not demonstrated that Lakewood's students are being denied T&E, they have not presented evidence that would allow the Commissioner to sustain a judgment in their favor. Respondents' Motion to Dismiss should be granted and the Amended Petition dismissed.

CONCLUSION

For the reasons set forth above, the Amended Petition should be dismissed.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 

Jennifer Hoff
Deputy Attorney General

Dated: April 30, 2018