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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 for A.S. Petitioners , v. Angelica Allen-McMillan, Acting Commissioner; The New Jersey State Board Of Education; And The New Jersey Department Of Education Respondents.	On remand to the Agency, Appellate Docket No. A-3693-20 OAL DOCKET No: EDU 11069-2014S Agency Ref. No.: 156-6/14 CERTIFICATION OF PAUL L. TRACTENBERG, ESQ.IN SUPPORT OF THE MOTION IN AID OF LITIGANTS' RIGHTS

PAUL L. TRACTENBERG, ESQ., of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey, serving as co-counsel with Arthur H. Lang, Esq., for

Petitioners-Appellants in the above-captioned matter. I submit this certification in support of the Petitioners-Appellants' motion for an Order in Aid of Litigants' Rights.

2. This case was filed with the commissioner of education in June 2014, more than 10 and a half years ago. Throughout the course of this overlong litigation, my co-counsel and I have sought to use every conceivable means to seek to expedite the resolution of this case since the fundamental constitutional rights of our student-clients to a "thorough and efficient" education (T&E) are at stake.

3. Indeed, since first an Administrative Law Judge (ALJ) on March 1, 2021, almost four years ago, and then a unanimous panel of this court on March 6, 2023, almost two years ago, have ruled that our claim of a denial of T&E has been established, there is an urgent need to remedy that violation since the students have been suffering an irreparable injury every day that their fundamental rights go unfulfilled.

4. Since the State respondents did not appeal this court's ruling regarding the denial of T&E, the only remaining issue in this case is whether the denial of T&E is being caused by the School Funding Reform Act (SFRA), the State's primary chosen means of funding T&E. The Acting Commissioner's April 1, 2024, final agency decision regarding that issue, on remand from this court, is the focus of an appeal as of right pending

before this court.

5. We have sought several times unsuccessfully to accelerate the court's consideration of our appeal, most recently by a motion to accelerate filed on November 25, 2024, and denied on December 9, 2024. This court's order included the following supplemental statement: "The briefing in this matter was completed in August 2024 and appellant requested oral argument. The case will be scheduled on an oral argument calendar in due course."

6. We have been advised by the clerk's office of this court that "in due course" will likely mean another five or six months, or a total of 10 or 11 months since briefing was completed.

7. A recent development involving the Lakewood School District has made such a delay in the resolution of this case unacceptable for our student-clients. In a petition for emergency relief filed with the commissioner of education by the Lakewood Board of Education on January 14, 2024, and referred to an ALJ for hearing on January 21, 2024, the emergency cited by the district was that it would run out of funds to operate its schools sometime between January 30 and February 22, 2025. The reason, the district asserted, was that the State has not yet provided, or even committed itself to provide, a $104 million advanced state aid loan built into the

district's approved budget for the current school year, which is already more than half over. In the ten prior school years, the State provided such loans in escalating amounts (totaling $215 million) by no later than November of the school year, and usually significantly earlier. This year's action by the NJDOE is unexpected and unprecedented.

8. To discharge our responsibilities to our clients as best we can, my co-counsel and I have decided to seek the court's leave to withdraw our request for an oral argument and to urge this court to render a decision on the papers as expeditiously as possible. Although we would have preferred the opportunity to present oral argument to the court, the consequences of another five or six months of delay, given the current circumstances in the district, simply do not seem justified.

9. If this court is willing to render an expeditious decision on the papers, it should take into consideration the State's current conduct regarding the Lakewood School District and the district's fiscal capacity to keep its schools open for the full school year. While it is clearly unacceptable for the district to provide its students with a full school year of education that does not satisfy T&E, it is quite another matter for the district to be unable to provide a full school year of education. In addition, we are requesting that the court order the State to provide sufficient funding, by grant

or loan, to enable the Lakewood public schools to be open and operating for the full school year.

10. Even if the State eventually were to provide enough last-minute funding to keep the Lakewood public schools open for the full school year, it would not cure the added injury to our student-clients. As the ALJ and this court found, in prior school years, even with tens of millions of dollars of advanced state aid loans provided much earlier in the school year, Lakewood students were still being denied T&E. And as the Abbott jurisprudence makes clear, uncertain, discretionary funding (and repayable loans are not even "funding" in the usual sense) cannot be appropriate T&E funding. Finally, funding as uncertain and as late in the school year as any upcoming funding for Lakewood might be, is totally incompatible with effective educational planning.

11. As to whether the funding necessary to keep the Lakewood schoolhouse doors open for the balance of the school year is likely to materialize, the position taken by the State regarding the district's emergency petition and the ALJ's January 22, 2025, decision denying the petition raise serious doubts. The State argued that none of the *Crowe v. DeGioia* (90 N.J. 126 (1982)) standards for emergency relief—irreparable harm, a settled legal basis for the claim, a likelihood of prevailing on the merits, and a showing that, if the requested

relief is not granted, the petitioner will suffer greater harm than the respondent—were established and the ALJ agreed.

12. Indeed, the ALJ's conclusion was especially revealing, if confusing, about whether and when additional State funding might materialize. According to the ALJ, the NJDOE does not have to "make a loan commitment" to Lakewood until three "alternative conditions arise:" (1) the NJDOE or the State Monitor in the Lakewood district completes "their current investigation into LPSD's finances; or (2) if the NJDOE determines the LPSD is out of money; and (3) the NJDOE determines how much money is needed by the LPSD to complete the current school year." (p. 12)

13. The ALJ's language is confusing in several respects. First, are the three stated conditions "alternative," meaning only one must be satisfied to justify the NJDOE in making a loan commitment or must all three be satisfied? The latter interpretation seems more likely given the substance of the conditions (i.e., completing the investigation should not be enough if its result is that Lakewood does not require more money). Second, the use of "or" between the first and second conditions and "and" between the second and third increases the confusion.

14. The conclusion of the ALJ's decision (p. 13) raises another puzzlement, regarding whether LPSD can use special

revenue funds to meet general use needs, when she writes that: "There is no other statutory or regulatory requirement for authorization from the State Monitor and/or the NJDOE to use special revenue funds for expenses other than those for which those funds were earmarked." Inexplicably, both the State in its brief and the ALJ in her decision seem to accept that the district can divert special revenue funds from the federal and state governments, and perhaps other grantors, the lion's share of which is earmarked for the 50,000 nonpublic students, to other uses and students, and that the only question is whether to do so the district needs specific authorization from the State.

15. All of this suggests that the process of LPSD actually receiving the funds necessary to keep its schools open to the end of the school year is a complicated and uncertain one. This is hard to understand and credit since the district's budget, approved months ago, at least by the State Monitor and the county superintendent, included a $104 million line item for a state loan.

16. This uncertainty about a faulty funding regime that doesn't meet constitutional requirements anyway underscores how urgent it is for this court to finally and definitively address the issue of a permanent and constitutionally acceptable remedy for Lakewood's public school students—an

amendment of SFRA or the adoption of other legislation that would make the State's school funding system constitutional as applied to Lakewood.

17. After all, if SFRA funding and other state education aid is only providing the Lakewood School District with enough funding to keep its schools open for five or six months, rather than for the full school year, isn't that proof positive of SFRA's unconstitutionality as applied to Lakewood?

Respectfully submitted,

s/ ***Paul L. Tractenberg***

Paul L. Tractenberg, Esq.

Dated: February 11, 2025