

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
DOCKET NO. EDU 11069-14

LEONOR ALCANTARA, :
individually and as :
Guardian ad Litem for :
E.A., et al., :
 :
Petitioner, :
 :
-vs- :
 :
DAVID HESPE, COMMISSIONER :
OF EDUCATION, NEW JERSEY :
STATE BOARD OF EDUCATION :
AND NEW JERSEY DEPARTMENT :
OF EDUCATION, :
 :
Respondent. :
 :
 :

TRANSCRIPT
OF
RECORDED PROCEEDINGS

July 22, 2019

BEFORE:

THE HONORABLE SUSAN M. SCAROLA, A.L.J.

APPEARANCES:

By: ARTHUR H. LANG, ESQ.
Attorney(s) for Petitioner

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
ROBERT ORTLEY				
By Ms. Hoff	8			
By Mr. Lang		48		
By The Court	50			

E X H I B I T S

3

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
R-22	Audit Report, 5/19/14	14	15
R-23	Closeout Report and approval of Corrective Action Plan	43	44

1 THE COURT: Good morning. This is the matter
2 of Alcantara, et al. vs. Hesse, former Commissioner of
3 Education, Department of Education, et al. It's our
4 docket number EDU 11069-14.

5 Counsel, your appearances for the petitioner?

6 MR. LANG: Arthur Lang for petitioners.

7 MS. HOFF: Good morning, Your Honor. Deputy
8 Attorney General Jennifer Hoff on behalf of the
9 respondents. With me today also is Deputy Attorney
10 General Geoff Stark, (out of microphone range) George,
11 and Angela Velez from the Department of Education.

12 THE COURT: All right. Thank you.

13 MS. HOFF: Thank you.

14 THE COURT: And appearing on behalf of the
15 participant?

16 MR. INZELBUCH: Michael Inzelbuch, and I need
17 to --

18 THE COURT: All right. Very good.

19 MR. INZELBUCH: -- address the Court.

20 THE COURT: All right. So --

21 MR. INZELBUCH: I would like to address the
22 Court.

23 THE COURT: Mr. Inzelbuch, you are a
24 participant and --

25 MR. INZELBUCH: Actually --

1 THE COURT: You are a --

2 MR. INZELBUCH: I am a participant and --

3 THE COURT: You are a participant and your

4 participation --

5 MR. INZELBUCH: -- you quoted the wrong code

6 section, which does not apply.

7 THE COURT: Mr. --

8 MR. INZELBUCH: We have a right -- excuse me -

9 - we --

10 THE COURT: Mr. Inzelbuch, please.

11 MR. INZELBUCH: -- we have a right --

12 THE COURT: If you have a problem with my

13 ruling, take it up with the Commissioner.

14 MR. INZELBUCH: I don't have to take it up

15 with the Commissioner.

16 THE COURT: We are going to continue today

17 with Ms. Hoff.

18 MR. INZELBUCH: The code section you cited --

19 THE COURT: At this time, you can --

20 MR. INZELBUCH: -- does not exist.

21 THE COURT: -- continue with your examination.

22 MS. HOFF: Your Honor --

23 MR. INZELBUCH: The code section you wrote

24 does not exist, I will put on the record.

25 THE COURT: Mr. Inzelbuch --

1 MR. LANG: Your Honor --

2 THE COURT: Mr. Lang?

3 MR. LANG: Let me -- let me just -- it's --

4 it's just a clerical error. It's --

5 MR. INZELBUCH: Mr. Lang, you're not going to
6 speak for me.

7 THE COURT: Sixteen six.

8 MR. INZELBUCH: The code section --

9 THE COURT: Mr. Inzelbuch --

10 MR. INZELBUCH: -- yet another error by this
11 Court --

12 THE COURT: -- if you have a problem, take it
13 up with the Commissioner.

14 MR. INZELBUCH: -- in this matter.

15 THE COURT: Or I will consider removing you as
16 a participant.

17 MR. INZELBUCH: You can do as you wish.

18 THE COURT: The application --

19 MR. INZELBUCH: But I have a right under the
20 statute to argue --

21 THE COURT: Unless you are causing undue
22 confusion and delay. This is Ms. Hoff's turn to --

23 MR. INZELBUCH: I appreciate that, but
24 according to the order before you -- Judge Kennedy --
25 we have a right to argue. That is here in an order

1 which preceded you.

2 THE COURT: That's okay, Mr. Inzelbuch.

3 MR. INZELBUCH: This is the --

4 THE COURT: But now I'm running this hearing.
5 You don't have the opportunity today. In fact, I'm
6 might limit your participation or remove you totally as
7 a participant because --

8 MR. INZELBUCH: Well you could threaten that
9 all you want. That would just be another grounds for
10 you to be removed.

11 THE COURT: That's good.

12 So, Ms. Hoff, will you please question your
13 witness.

14 MS. HOFF: Yes, thank you. I call to the
15 stand Robert Ortley, who is already sitting there.

16 THE COURT: Okay. Could you stand, please?

17 THE WITNESS: Oh, sure.

18 THE COURT: Raise your right hand.

19 R O B E R T O R T L E Y, RESPONDENT'S WITNESS, SWORN.

20 THE COURT: State your name.

21 THE WITNESS: Robert.

22 THE COURT: Last name?

23 THE WITNESS: Ortley.

24 THE COURT: And spell it.

25 THE WITNESS: O-R-T-L-E-Y.

1 THE COURT: Very good. Thank you. Have a
2 seat. Just keep your voice up.

3 Ms. Hoff?

4 MS. HOFF: Yes, thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. HOFF:

6 Q Good morning, Mr. Ortley.

7 A Good morning.

8 Q Are you currently employed?

9 A No, I am not.

10 Q Were you -- were you ever employed?

11 A Yes, I was.

12 Q Are you currently retired?

13 A Yes, I am.

14 Q And where were you employed prior to
15 retirement?

16 A New Jersey Department of Education.

17 Q And in what capacity were you employed there?

18 A Over the last 19 years of my career, I was the
19 manager of the State Aid Audit Unit.

20 Q Okay. Can you tell me what the State Aid
21 Audit Unit is?

22 A It's a collection of auditors, managed by myself
23 during the time that I worked for the Department, and
24 our responsibility was to work for and with the
25 Division of Finance, conducting audits of data

1 submitted to the Department of Education on
2 applications for state school aid.

3 Q And you stated you were in that position for
4 how many years?

5 A Nineteen years as a manager.

6 Q Okay.

7 A And a total of 38 years with the Department.

8 Q And what is your educational background?

9 A Bachelor's degree in accounting.

10 Q Okay. And you stated you've been with the
11 Department for 38 years prior to your retirement. What
12 other positions have you held there?

13 A If you go back to the very beginning, entry level
14 positions, associate auditor, senior auditor,
15 supervising auditor, assistant manager, and eventually,
16 manager.

17 Q Okay. Have you held any other positions
18 outside of the Department?

19 A For a short time, about 11 months with the New
20 Jersey Department -- the New Jersey Natural Gas Company
21 as an internal auditor.

22 Q Now as manager of the State Aid Audit Unit,
23 were you involved with individual audits in any
24 capacity?

25 A Yes, I was involved with every audit that the

1 office ever did during the 19 years that I was a
2 manager.

3 Q And how were you involved?

4 A My responsibilities was -- were to review and
5 evaluate the accuracy of the work papers and ensure
6 that the quality control of the audit reports was
7 sufficient for an accurate issuance of an audit
8 finding.

9 Q And how were audits assigned to individual
10 auditors?

11 A Basically, during most of the time, we had between
12 five and seven audit staff and we assigned them based
13 upon an audit plan that was assembled every year and we
14 rotated staff as best as we can, regionally.

15 Q Okay. And how many audits did your unit
16 conduct per year approximately?

17 A It depended upon the size of the school districts.
18 We could do as many as 50 audit assignments in a year
19 if we were focusing on school districts with
20 enrollments of between 500 and 1,000 students.

21 Q Did you -- did you ever know ahead of time
22 what audits you would be conducting?

23 A Usually about a year ahead of time. I was tasked
24 each year with assembling an audit plan based upon
25 requests by the Division of Finance and other offices

1 such as the Division of Special Ed and other offices
2 within the Department of Education.

3 Q And when your office staff -- when your
4 auditors and you conducted an audit, did you go out to
5 the individual school districts to do so?

6 A Yes.

7 Q Okay. So what, generally, did your office do
8 to conduct an audit?

9 A The starting point with every audit is to evaluate
10 each school district's adherence to requirements by the
11 Division of Finance for sets of working papers that are
12 supposed to be maintained by each school district to
13 support the data submitted for state aid formula
14 purposes.

15 Q Okay. And did the districts submit these
16 working papers for your review?

17 A Upon request, yes.

18 Q So what did you do with this information?

19 A We examined it and compared it to the -- to the --
20 we compared the documents to the data submitted to the
21 Department through the electronic submission system,
22 specific to whatever district we were auditing and the
23 -- and the actual fiscal year that we selected for
24 audit.

25 Q And did your office have a certain

1 methodology that you used when conducting audits?

2 A Yes, standard methodology, to compare lists and
3 other -- other data sources within the district to the
4 numbers that were reported to the Department of
5 Education.

6 Q And did you follow this methodology across
7 all school districts?

8 A Yes, we did.

9 Q Why?

10 A Well, it's the audit standard that we were charged
11 with adhering to. So, you know, as an example, it
12 could involve reviewing accounting records, purchase
13 orders, transactions for payments, attendance records
14 and such.

15 Q Okay. And what generally -- and I'm saying
16 generally -- is the goal of an audit?

17 A The goal of an audit is to evaluate how well the
18 district supported the numbers that were submitted to
19 the Department of Education. And if there were
20 variances involved or identified by our audit, we were
21 responsible for working with the Division of Finance to
22 recalculate the state aid numbers and restate them.

23 Q Okay. Did your office ever conduct an audit
24 of Lakewood Public School District?

25 A Yes.

1 Q And for what reason was an audit conducted of
2 Lakewood Public School District?

3 A There were various requests, again, from the
4 Division of Finance, Assistant Commissioners' Offices,
5 County Superintendents -- a variety of -- of -- of
6 upper echelon department employees that assigned us to
7 audit the Lakewood School District.

8 Q And would you -- would your office, though,
9 be responsible for auditing all school districts in the
10 State of New Jersey that received aid?

11 A Yes, we could potentially audit anywhere at any
12 time.

13 Q And have you audited other school districts
14 within the State of New Jersey?

15 A Many of them over many years.

16 Q And so, when your office conducts an audit,
17 do you issue a report of those findings?

18 A Yes, that's the ultimate conclusion of every
19 audit.

20 Q Okay. Can you turn to, in the front of your
21 binder, what is labeled as "R-22?" Can you please take
22 a look at that briefly?

23 A Okay.

24 Q Do you recognize what this document is, Mr.
25 Ortley?

1 A Yes, I do.

2 Q And what is it?

3 A It's the audit report dated May 19th, 2014, which
4 is detailing the findings involved with our audit of
5 the October 14th, 2011 application for state school aid
6 and district report of transported resident students.

7 (R-22 Marked for
8 Identification)

9 Q Okay. And as the manager of the State Aid
10 Audit Unit, did you take part in the creation of this
11 report?

12 A Yes, I did.

13 Q Okay. And was this report made near or at
14 the time your office completed the audit into the
15 ASSA/DRTRS audit of Lakewood?

16 A This audit was released at the conclusion of our
17 extended fieldwork and internal review process that
18 both myself, that I had to conduct, as well as the
19 superiors that I reported to, and their reviews of this
20 report.

21 Q And was this report made in the regular
22 course of business at the State Aid Audit Unit?

23 A Yes, it was.

24 Q And was it then kept or maintained as part of
25 the regular course of business at the State Aid Audit

1 Unit?

2 A Yes, it was.

3 MS. HOFF: Your Honor, I would now like to
4 move R-22 into evidence.

5 THE COURT: Mr. Lang?

6 MR. LANG: Oh, other than the same objection I
7 had the other day about the relevance because it's so
8 old --

9 THE COURT: As is -- as is your case,
10 actually.

11 MR. LANG: It is, yes. So it's the same thing
12 --

13 THE COURT: All right. Thank you.

14 MR. LANG: So I have no --

15 THE COURT: So it will be admitted.

16 (R-22 Entered into
17 Evidence)

18 BY MS. HOFF:

19 Q Mr. Ortley, what was the purpose of this
20 particular audit?

21 A The purpose of this particular audit was to
22 determine the accuracy of the numbers or the data,
23 based upon enrollment records and accounting records of
24 the school district for state aid reporting purposes.

25 Q What is the Application for State School Aid?

1 A The application for state school aid is a data
2 submission exercise or process that's been in existence
3 dating way back to the mid 1970's. It transcends
4 multiple state aid formulas that have been in existence
5 through that time period and every year, every school
6 district, particularly in -- since the 1990's, every
7 school district has to report the number of students
8 enrolled as of October -- essentially October 15th, each
9 year. It's an annual report that every school district
10 does every year for these purposes.

11 Q Why do they have to report the number of
12 students enrolled?

13 A Because the number of students involved are
14 basically sorted into categories, multiple categories,
15 and then used and applied to a formula by the Division
16 of Finance in order to allocate state aid to all the
17 school districts.

18 Q What is the District Report of Transported
19 Resident Students?

20 A That's a report that captures -- again, reports
21 the data for all students being transported. And for
22 state aid purposes, these students are generally the
23 ones known as -- as more than remote from their home to
24 school locations.

25 Q Is there a significance, the October date you

1 have, October 14th, 2011? Is there -- October 14th?

2 A Yeah, October 14th, that year was -- it was the
3 last -- basically the Friday preceding the 15th of
4 October.

5 Q And why -- why is that date important?

6 A Well, the state aid law has always required --
7 well, again, going back to the Quality Education Act of
8 1990, districts are required to report the last
9 enrollment, per -- per statute -- the last date of
10 enrollment on or before October 15th, each year.

11 Q Okay. And turning to the audit report, I am
12 looking at page two, also labeled as "DOE-0128." You
13 list a "Scope" section. To what is this referring?

14 A This refers to all categories that are contained
15 on the application for state school aid that are going
16 to be subject to review of a particular audit. In this
17 case, Lakewood's audit was -- this was the parameters
18 of every enrollment category that we were responsible
19 for reviewing and comparing to the ASSA numbers.

20 Q And do you list out these categories in more
21 detail throughout your report?

22 A Yes.

23 Q Okay. And when you're looking at these
24 categories, do you look for any particular type of
25 supporting documentation?

1 A Yes, there are supporting documents that are
2 prescribed by the Department of Education to all school
3 districts. Most notably, the lynch -- the lynchpin for
4 all reporting is the official New Jersey School
5 Register, which is a contemporaneous and continuous
6 document which indicates and provides the reviewer
7 daily attendance and absence for the entire school
8 year.

9 Q So did your office make any findings in this
10 particular report?

11 A Yes, we did.

12 Q Okay. And are they listed in this report?

13 A Yes, they are.

14 Q So in looking at the same page under
15 "Findings," you first list "On-Roll Full-Time
16 Students." What is an "on-roll full-time student?"

17 A An on-roll full-time student in any school
18 district is a student who's a public school student who
19 lives in the school district, subject to -- to this
20 process, anywhere from kindergarten up through grade
21 12, if it's, in fact, a school district with all -- all
22 12 grades applicable, as well as special education
23 students.

24 Q You state that "The District reported 5,267
25 students and OFAC -- " What is "OFAC?"

1 A The OFAC is an administrative group, the Office of
2 Fiscal Accountability and Compliance. During the 19
3 years that I managed this group, for the first six or
4 seven, I was assigned to report directly to Division of
5 Finance, but then in 2007, the OFAC was created as a
6 separate section and my office was organized under the
7 OFAC. And the name of the signator, the director, on
8 the cover letter of this report, Mr. Robert Cicchino,
9 he was the director of the Office of Fiscal
10 Accountability and Compliance.

11 Q All right. Going back, "The District
12 reported 5,267 students and OFAC verified 5,248
13 students." By what means did OFAC verify this?

14 A This is an examination of each and every student
15 in the New Jersey School Register, one at a time, page
16 by page, to determine the amount of students actually
17 recorded as being in continuous attendance for the
18 entire month of October, which is the mechanism that's
19 used to evaluate the October 14th count.

20 Q Is -- so there's a difference in the two
21 numbers. Is that correct?

22 A That's correct.

23 Q All right. Is there an issue when there's a
24 difference between the two numbers?

25 A In any of these categories, whenever there's as

1 much as even a change of one student, it can impact on
2 the calculations of state aid.

3 Q Your next finding refers to a category called
4 "On-Roll Shared Time." What is on-roll shared time?

5 A On-roll shared time basically is a count of
6 students who spent essentially a half a day of their
7 day in, say, for example, in this case, Lakewood High
8 School, and the other half of their day would be in the
9 Ocean County Vocational School.

10 Q The District reported 90 students and OFAC
11 verified 92, for an increase.

12 A That's correct.

13 Q And by what means did you verify that?

14 A Same process as before, examining each and every
15 name of each and every student in the enrollment and
16 attendance registers, not only for Lakewood Public
17 Schools, but also for the Ocean County Vocational
18 Schools.

19 Q And what do you mean exactly by, "an
20 increase?"

21 A There were two more students. You know,
22 basically, at the conclusion of the analysis, there are
23 92 students that could be identified by name in these
24 school registers. So it's simply comparing it to the
25 90 reported by the District and the difference is a

1 positive two.

2 Q And how does that affect state aid if there's
3 an increase in students?

4 A Well, for that category, there could actually --
5 there could be an increase as a result of those two
6 additional students. But every -- every one of these
7 categories is netted out against each other.

8 Q Your next finding refers to "Sent Full-Time."
9 What is that?

10 A These are schools -- students who, most probably
11 because of a special education requirement or a need,
12 most probably are students who are going to be sent out
13 of the Lakewood School District to another local
14 educational agency or public school district and
15 they're going to be sent on a tuition basis, so they're
16 still residents of the school district.

17 Q So it states here that "The District reported
18 12 students while the Department verified five
19 students." What did you do to verify that?

20 A Well, we tried to obtain the listing that
21 contained the exact names of the 12 students and we
22 could find no such listing, so we needed to examine
23 special education rosters, individual education plans,
24 and other tuition bills, and we were able to identify
25 five students that were clearly sent out of district on

1 a tuition basis.

2 Q And again, is this an issue?

3 A It's an issue because they -- the District was
4 paid for seven students that we could not identify and
5 verify, although we attempted to do so.

6 Q Your next finding refers to "Sent Shared
7 Time." What do you mean by this?

8 A This is -- this would -- an example of a student
9 in this category would be a student that, for whatever
10 reason program-wise, didn't receive their education
11 within the district so they were sent to another public
12 school district, but also probably attended the Ocean
13 County Vocational School District.

14 Q Okay. And the District reported one but you
15 could not verify any. What did you do to verify?

16 A We inquired of the District as to the name of the
17 student who was sent shared time and we were unable to
18 be provided with any information for this category.

19 Q Your next finding refers to "Received Full-
20 Time." Is that correct?

21 A That's correct.

22 Q And -- pardon me -- and what's received full-
23 time?

24 A That would be a student who's not a Lakewood
25 resident who is actually being received by the Lakewood

1 School District from an out of school -- out of town
2 student, public school student. And there's a tuition
3 revenue in this case, so it's the -- it's the sending
4 district's student resident enrollment that they get
5 credit for, so that has to be backed out of the
6 resident enrollment count here.

7 Q It says that you got -- you were able to
8 verify this student. Is that correct?

9 A That's correct.

10 Q Why would you note this if the District's
11 information was able to be verified?

12 A Well, as with all categories, the ultimate goal is
13 we hope to come up with the number that the District
14 reported, so in this case, we were able to do that.

15 Q Now your next finding is "Sent to Regional
16 Day Schools." What is this?

17 A These are schools that exist anywhere -- you know,
18 all over the State of New Jersey. There is one located
19 in Jackson. And these are schools set up to provide
20 specific special ed programs for specific students.
21 Again, they would have been residents of Lakewood who
22 were sent to the regional day schools on the basis of a
23 tuition payment.

24 Q And the District reported three students and
25 the Department was able to verify. Is that correct?

1 A That's correct.

2 Q All right. The next category is "Sent to
3 Private School for Students With Disabilities." What
4 are you referring to?

5 A Private schools for students with disabilities --
6 and again, these schools exist all over the State of
7 New Jersey, and in some cases, are actually over the
8 border in Pennsylvania. These are schools that have
9 been in existence going back to the early 80's. They
10 provide different types of special ed programs that may
11 not be provided by public school districts. So a
12 tuition is paid by the home school district for
13 residency purposes and these students are sent on this
14 tuition basis, based upon a contract that exists
15 between the school district and the private school for
16 the disabled.

17 Q Now are these students, public school
18 students?

19 A They are actually public school students who are
20 attending a private school but they are -- they are
21 considered public school students for state aid
22 purposes.

23 Q And here it says that the District reported
24 174 students, while the Department verified 118. Is
25 that correct?

1 A That's correct.

2 Q And what did you do to verify these numbers?

3 A We examined the available contracts, approved
4 contracts for all the private schools for the disabled,
5 listings of the students within special education
6 rosters, we examined individual education
7 programs/IEPs, all for the purpose of verifying that
8 the students being reported were actually in attendance
9 and could be traced to a tuition payment register for
10 existence as an actual student that generated state
11 aid.

12 Q Now you say in here that there was "limited
13 incomplete supporting documentation." Is that correct?

14 A That's correct.

15 Q And to what are you referring?

16 A I'm referring to a decrease of 50 students that
17 were -- were backed out of the count based upon our
18 audit review.

19 Q And what missing documentation was there?

20 A There were missing contracts in certain cases. In
21 certain cases, there were missing tuition payments. In
22 certain cases, the students did not actually begin
23 their program until after October 14th. And as I
24 recall, there was a category of students who were
25 actually sent not to other private schools for the

1 disabled, but other educational agencies that are not
2 public schools, they're not private schools, but they
3 can be allowed if there's an order of some kind by an
4 administrative law decision or a commissioner's
5 approval. There are very specific requirements that
6 those students be pre-approved before they can be
7 reported on an application.

8 Q Next you move to "Summary of Resident
9 Enrollment." Is that correct?

10 A Yes, that's correct.

11 Q And what is "summary of resident enrollment"?

12 A All the categories that we've discussed lead up to
13 a magic number, if you will, or a sum number that is
14 the -- is the number that's sorted by grade levels,
15 special ed levels, and it's -- it's inputted for factor
16 purposes to calculate a state aid. So you basically
17 have a sum of the in-district students who are
18 attending, the out-of-district school students who are
19 residents in different categories, backing out any
20 students that are not residents of the district that
21 are received from another district -- add, subtract,
22 add, subtract until you come up to the total resident
23 enrollment number for state aid purposes.

24 Q Now you state that the District reported
25 5,317.5 residents while OFAC verified 5,233, for a

1 decrease of 84.5. What did you do to verify?

2 A Well, by now, there was -- these -- these were
3 simply the mathematical summations of these numbers.
4 We had already gone through each category and done our
5 verification process, again, to supporting
6 documentation to indicate that students were -- were
7 properly or not properly reported.

8 Q And how do you decrease a student by .5?

9 A Well, again, using the shared time students as an
10 example, if you had one student who is enrolled as a
11 12th grader who is also enrolled in the vocational
12 school, well that student represents .5 of a resident
13 student for, in this case, Lakewood's purposes. The
14 other .5 is actually a resident count for the
15 vocational school under the law.

16 Q After this, you go into something called
17 "Low-Income Enrollment." What is that?

18 A Okay. Beginning with all these categories that
19 are listed in the rest of the report after the summary
20 of resident enrollment, these are subset categories so
21 additional factors can be added in for school funding
22 formula purposes and the low-income enrollment is one
23 of those categories. Basically, it's a count within --
24 within the resident enrollment count, it's the number
25 of students who are eligible for free or reduced meal

1 and there's an extra -- that's considered at-risk
2 funding or extra funding component under the funding
3 formula.

4 Q And when you say it's considered an extra
5 funding component, do you know how that is?

6 A Well, there are weights for all the different
7 students in the funding formula, so a student may have
8 a particular weight because they're a high school
9 student, but if they're also eligible for a free and
10 reduced meal, there could be an additional funding
11 weight attached to that.

12 Q And so -- pardon me -- you state that the
13 District reported 4,442 students while the DOE verified
14 4,235 LEP students -- not LEP -- low-income students.
15 Pardon me. What did you do to verify this?

16 A We examined the -- what's known as the Master
17 Eligibility Listing and other documents that are
18 required to be maintained by the school district for
19 National School Lunch purposes and those documents are
20 also used to verify the counts on the application for
21 state school aid.

22 Q So there was a decrease of approximately 200
23 students. Is that correct?

24 A That is correct.

25 Q And is this an issue?

1 A It's an issue because this decrease of 200 can
2 certainly impact on the recalculation of state aid.

3 Q And you then discuss LEP students. Is that
4 correct?

5 A Yes, that's correct.

6 Q And what is an LEP student?

7 A Limited English Proficient Student.

8 Q Okay.

9 A So a student enrolled in the district who may not
10 be sufficiently English language proficient based upon
11 an evaluation or test administered to that student for
12 the first time that they're enrolled in the district.

13 Q And do LEP students have this additional
14 weight factor?

15 A They do because they receive -- the additional
16 weight factor is supposed to be used because these
17 students are receiving additional educational services
18 under English as a Second Language.

19 Q Now you separate your LEP -- the LEP students
20 here into low-income LEP students and not low-income
21 LEP students. Is that correct?

22 A Yeah, that is because the state funding formula
23 separates them.

24 Q Why?

25 A There are different factors for a low-income LEP

1 versus a not low-income LEP. There's a slightly higher
2 aid factor for -- so there's -- there's an aid factor
3 for a child who is limited English proficient as a base
4 aid factor and then, on top of that, if that student is
5 eligible for free or reduced lunch, then there's also
6 additional funding involved.

7 Q So does that increase the weight --

8 A Yes.

9 Q -- for funding purposes?

10 A Yes, it does.

11 Q Okay. So would that student potentially
12 receive more money than a not low-income LEP student?

13 A Yes, absolutely.

14 Q All right. And so you state that the
15 District reported 843 LEP resident students while the
16 Department verified 747. Is that correct?

17 A Yes, that's correct.

18 Q And what did you do to verify this
19 information?

20 A We examined all the test scores, student rosters,
21 compared the names of the students back to the
22 attendance and enrollment records that were used for
23 on-roll full-time and determined that there were
24 various reasons why there were 96 students that
25 couldn't be considered eligible, most probably because

1 they were not given a test or there was not a
2 documented test or they weren't actually enrolled in
3 the school district.

4 Q And this is an issue?

5 A Yes, it is.

6 Q Why is it an issue?

7 A Because this can decrease the district's state
8 aid.

9 Q Now you next have a section called
10 "Transported Students, Regular and In-District Special
11 Education Students." Is that correct?

12 A That's correct.

13 Q And to what are you referring here?

14 A We're referring -- we're referring to the entire
15 population at the time of audit of all students being
16 transported by the District, and in this case, it would
17 have been a combination of public school students and
18 non-public school students. And this particular count
19 here only deals with students who were eligible for
20 state aid funding, either because they're more than
21 remote from home to school or they have an IEP which
22 requires a transportation component for that child,
23 based upon their disability, even if they're less than
24 remote. And this generates state aid.

25 Q You stated that the District reported 14,003

1 students while OFAC was able to verify 13,676.5
2 students. Is that correct?

3 A Yes, that is correct.

4 Q And what did you do to verify this?

5 A Okay. The staff examined -- well, the staff
6 compares every name that's contained in this 14,003 to
7 supporting documentation. The Department of Education
8 maintains a database every year for the transportation
9 report, so we're already -- we already have at our
10 disposal for audit purposes, our audit staff is
11 examining each and every name and comparing it to the
12 New Jersey School Register in the case of, say, in-
13 district regular public school students to ensure that
14 they were actually students attending the district and
15 that there's a match to the names of the students that
16 were transported.

17 Q And to what do you credit the decrease of
18 326.5 students?

19 A The decreases were a net result of a lot of pluses
20 and minuses that are actually tied into a supporting
21 schedule in the report. But, you know, in most cases,
22 the decreases would have most likely been caused by the
23 fact that students purported to be transported to one
24 of the public schools, those names of the students did
25 not appear in New Jersey School Registers.

1 Another listing would be for students enrolled in
2 the non-public schools. There's a form that's an
3 attendance certification form known as a B8T, so in
4 those cases, the names of the students purported to be
5 transported to the schools could not be verified into
6 the attendance certifications for each of those non-
7 public schools.

8 Another reason you could have a decrease is
9 because a child may have an IEP but the IEP does not
10 actually contain a specific requirement that the child
11 be transported. There can also be increases because
12 there are other higher paying categories where there
13 were not enough information in the IEP for the higher
14 paid category but those students could be moved into
15 this lower paid category. So there are -- there are
16 increases and decreases as a result of this.

17 Q In this section, you discuss something called
18 "Audit Exceptions." What's an audit exception?

19 A Well, anything that's a difference, anything
20 that's a change, so an audit exception could be
21 anything that's a plus or a minus.

22 Q Okay. And so -- pardon me -- so you state
23 that "Audit exceptions were reduced as a result of the
24 current administration efforts to resolve the audit
25 exceptions to a limited degree." What do you mean by

1 that?

2 A Well, you know, based upon the volume of students,
3 the audit staff that was assigned to this were in the
4 district for well over a year. There were many, many
5 times where we developed exception lists and worked
6 with the District, most notably, staff that were within
7 the pupil transfer or student transportation
8 department, to say, you know, look, we're missing this
9 -- these -- this is what we're missing for this
10 student. We're trying to find this student in the 12th
11 grade New Jersey School Register, because they're
12 supposed to be a 12th grader who's, you know, who's
13 transported. Can you help us help you bring your
14 numbers, your exception numbers down? Perhaps you can
15 do research together with us. So the District may find
16 that the child was actually being transported in the
17 11th grade or something of that nature. So there were -
18 - there was a lot of -- of continued ongoing follow-up
19 work with the District to ensure that they got credit
20 for anything we could give them credit for. So that's
21 -- that was put in the report, to make sure that we --
22 we let -- we let the reader know that the District
23 cooperated with us to work on this.

24 Q And did you allow the District to submit
25 additional documentation to you throughout the audit?

1 A Absolutely.

2 Q Why?

3 A Because it's fair and it leads to fair and
4 accurate reporting.

5 Q And do you do this with all districts or just
6 Lakewood?

7 A All districts.

8 Q You next discuss "Transported Students,
9 Special Education." What do you mean by this?

10 A These students are similar to the category we just
11 discussed except that there's usually an intensive
12 service involved, so therefore, it's a much higher
13 funding rate -- funding formula rate. Of course, as
14 you can see, the total population that we're auditing
15 is -- is less.

16 Q And so why -- why is this section here?

17 A This section is here because, again, it's -- it
18 ties into the actual state aid calculation for pupil
19 transportation.

20 Q And why?

21 A Again, we're -- we're trying to determine or the
22 object or our audit is to determine whether or not the
23 District received the proper amount of state aid that
24 they're entitled to receive.

25 Q Now you state that the District reported 267

1 students, while the Department verified 175.5. What
2 did you do to verify these students?

3 A This, again, is -- the most important examination
4 was of the records containing the IEPs for special
5 education intensive -- intensive service purposes.

6 Q So what accounted for the decrease from what
7 was reported to what was verified?

8 A In most of these cases, the decreases would have
9 been because the specific intensive service was not
10 required in the -- in the IEP.

11 Q Okay. And is this decrease important?

12 A It's important because it leads to a recalculation
13 of state aid.

14 Q Now finally, you discuss "Transported
15 Students, Courtesy." Is that correct?

16 A That's correct.

17 Q What do you mean by this?

18 A Courtesy students are students who are transported
19 by the District who are less than remote and don't
20 actually have a special education requirement but the
21 District is basically reporting them for courtesy
22 purposes. They're not students who generate any state
23 aid at all, but their count ties into these other two
24 counts.

25 Q So is it fair to say that the District

1 receives no state aid for courtesy bussing? Is that
2 true?

3 A That's correct.

4 Q Okay. And why do you have this section here
5 on courtesy bussing?

6 A We have the section here because it's -- it's
7 still data that's reported to the Department, so it was
8 necessary to review and compare. Because some -- some
9 students may have been moved out of this category, into
10 a paid category, and then other students who were in
11 the paid category might have been moved into this non-
12 paid category. It's a massive undertaking.

13 Q Now you state in the report that the District
14 reported it bussed 9,368 courtesy students and the
15 Department verified 9,398.5 students. Is this correct?

16 A That's correct.

17 Q And would that be a decrease of approximately
18 30 students?

19 A Yes.

20 Q And what did you find --

21 A Or in this case -- actually, in this case, it was
22 an increase of 30 students.

23 Q Increase -- pardon me -- so it's an increase.
24 What did you do to find an increase?

25 A Well, we had done all the detailed review that I

1 had indicated in your previous questions, so this is a
2 summary of the resulting changes as a result of our
3 review. In this category, this is not something that
4 would necessarily impact on -- on state aid, unless
5 part of these 30 and a half students had come from some
6 of the other factors. But it all is combined together
7 to recalculate state aid.

8 Q So you have a section here called
9 "Conclusion." Is that correct?

10 A Yes, that's correct.

11 Q And from this audit report, what was the
12 conclusion?

13 A The conclusion is that the calculations used for
14 the District's formula funding, the grand, you know,
15 total formula funding prior to New Jersey legislation
16 amending the amounts for -- for budget purposes, this
17 is the -- this represents the total dollar amount that
18 the District could have lost had the District been
19 fully funded under the state aid formula, the SFRA of
20 2008 formula.

21 Q And what was the total impact of your
22 finding?

23 A 2,308,499 dollars.

24 Q And is that documented in your report?

25 A Yes, it is.

1 Q Going to -- you had recommendations, is that
2 correct, in your report?

3 A Yes.

4 Q And is this something -- and that's on page
5 DOE-0132. Is this something you normally do in an
6 audit report?

7 A Yeah, pursuant to our audit process and procedure,
8 which goes back many decades, each time we issue a
9 report to any school district, the report is issued to
10 the board president with copies that go to the chief
11 school administrator, the chief business administrator,
12 and other parties within the district. These
13 recommendations serve as the -- the outline of a
14 template for the District to enact corrective actions
15 so that they can hopefully, you know, increase their
16 accuracy for future state aid purposes.

17 Q Okay. And so, you said that this goes to a
18 variety of people in the district. Do you ever meet
19 with those people to discuss this report?

20 A Absolutely.

21 Q And is there a formal -- formal process for
22 that?

23 A Yeah, there's -- there's a multiple process for
24 that. I mean, especially in an audit like this which
25 dealt with such a high volume of data, there's an

1 entrance conference laying out what we're going to do
2 at the beginning of the assignment. There are, in
3 certain cases, daily contact with our audit staff, as
4 well as further contact, including myself, on an
5 ongoing, continuous basis with the District.
6 Eventually, when the -- the audit process is concluded,
7 the District still has an opportunity at an exit
8 conference to be given an opportunity to either provide
9 any additional information or to at least understand,
10 as detailed as possible, why the findings are what they
11 are. So in conducting an exit conference with the
12 District, we would actually have an unofficial draft of
13 this report with no signatures on it so that the school
14 district can see the volume and magnitude of the
15 findings involved and it's possible that they could
16 still attempt to provide additional information which
17 could mitigate some of these findings.

18 Q Why, at this point, would you allow them to
19 provide any additional documentation?

20 A Because it's the fair thing to do in any case with
21 any audit with any district.

22 Q After the exit conference, after an audit
23 report is drafted, an official one, where does that go?

24 A Well, the Department has had a longstanding
25 process of having a response period, and of course, we

1 mentioned the OFAC earlier in your questioning. There
2 is, in the Administrative Code, a process where a
3 school district has up to as many as 75 days to respond
4 publicly to such an audit report, and they have
5 choices.

6 Q And what are those choices?

7 A The choices are to accept the report as it is or
8 appeal the entire report and attempt to provide
9 documentation or request an appeal for certain portions
10 of the findings.

11 Q Okay. Now if a district does not appeal the
12 report, what happens?

13 A If a district does not appeal the report, they
14 still need to -- to submit a corrective action plan,
15 backed up by a board resolution by the public -- you
16 know, at a public meeting, indicating that the report
17 has been read and discussed and acknowledged and
18 accepted.

19 Q What is a corrective action plan?

20 A It's -- it's a document which is -- again, it's a
21 template that matches the, in this case, eight
22 recommendations, where the District offers a response
23 to each of the recommendations, indicating that, yes,
24 we will attempt to enhance our procedures in a manner
25 that will ensure more accuracy in the future.

1 Q And who is the corrective action plan
2 submitted to?

3 A It's submitted to my -- well, I'm talking in the
4 present tense. I don't work there anymore. But when I
5 did, it was submitted both to my attention and to my
6 director's attention. And in a case like this, it
7 would also be at least shared with certain high level
8 assistant commissioners such as Division of Finance and
9 Field Services to ensure that the District's corrective
10 action response is correct -- you know, is acceptable.
11 And if, in fact, it's acceptable, then a letter would
12 be issued, either under my signature or Mr. Cicchino's
13 signature, indicating that your corrective action plan
14 assurances are acceptable, so we can move on and close
15 the case, but then that could lead to an actual
16 collection of state aid recovery.

17 Q Did Lakewood submit a corrective action plan
18 with regard to the ASSA/DRTRS audit we just discussed?

19 A Yes, they did.

20 Q Okay. And did you acknowledge the corrective
21 action plan?

22 A We did.

23 Q In what manner?

24 A We acknowledged it ultimately in writing by giving
25 approval of the corrective action plan.

1 Q Okay. I'd like you to take a look at what
2 has been labeled as R-23 in the binder before you.

3 A Okay.

4 Q Do you recognize this document?

5 A I do.

6 Q And what is this document?

7 A This is our closure, if you will -- our closeout
8 report and approval of their corrective action plan.

9 (R-23 Marked for
10 Identification)

11 Q And do you know who authored this document?

12 A I did.

13 Q And was this document made near or at the
14 time you reviewed the Lakewood Public School corrective
15 action plan for the ASA -- ASSA/DRTRS audit?

16 A Yes, it was.

17 Q And was this made in the regular course of
18 business at the Department of Education?

19 A Yes, it was.

20 Q And was it then kept or maintained in the
21 regular course of business of the Department of
22 Education?

23 A Yes, it was.

24 MS. HOFF: Your Honor, I would like to move R-
25 23 into evidence at this time.

1 THE COURT: Mr. Lang?

2 MR. LANG: (Out of microphone range)

3 THE COURT: All right. It will be accepted.

4 (R-23 Entered into
5 Evidence)

6 BY MS. HOFF:

7 Q And what is the purpose of this letter?

8 A The purpose of this letter is to share our review
9 of the corrective action plan and also acknowledge that
10 we had follow-up meetings with the district
11 administrators.

12 Q What's the purpose of follow-up meetings with
13 district administrators?

14 A The purpose was to give the District a chance to
15 submit additional information that was -- was located
16 or identified. Even though the District didn't file a
17 formal appeal, they did request that our team come out
18 and review some additional information to see --

19 Q And did you do so?

20 A And we did.

21 Q And were there any adjustments made to the
22 prior report?

23 A Yeah, there were some adjustments in the favor of
24 the school district which reduced the state aid
25 differences.

1 Q And why would you make such adjustments if
2 they didn't file formal appeal?

3 A Because that's the way I conducted business with
4 all the districts -- a fair attempt to give the
5 District credit for anything we could possibly give
6 them credit for.

7 Q And you stated that there were some
8 adjustments in favor of the District.

9 A Yes.

10 Q So did that mean the District was able to
11 provide more documentation outside of when you were
12 there doing the audit?

13 A Yes.

14 Q So what were your conclusions based on the
15 corrective action plan?

16 A The corrective action plan was found to be
17 acceptable as submitted and we reduced the final state
18 aid recovery slightly down to a number just a little
19 over two million dollars.

20 Q And when you say "state aid recovery," what
21 do you mean by that?

22 A That's the -- the amount of change in the state
23 aid formula calculation. And again, these -- these
24 total recoveries is the -- are the dollars that a
25 district would have had to pay back to us if the final

1 formula had been fully funded. Now, in this case, both
2 with Lakewood and any other district in the 2000 -- the
3 October 14th, 2011 cycle, the Division of Finance,
4 pursuant to the New Jersey Legislature and the budget,
5 actually paid one-fifth of these amounts to all the
6 school districts. So basically, this -- this audit,
7 for closure purposes, it was ultimately recommended
8 that one-fifth of these amounts be recovered by the
9 Department of Education.

10 Q So the District would owe the Department of
11 Education one-fifth of the two million dollars?

12 A Yes.

13 MS. HOFF: Your Honor, may I have a two minute
14 recess?

15 THE COURT: Certainly.

16 MS. HOFF: Thank you. Too much water. Thank
17 you.

18 THE WITNESS: Does that mean I get a two
19 minute recess, too?

20 MS. HOFF: Indeed, you do.

21 THE WITNESS: Two minutes.

22 (BRIEF RECESS)

23 THE COURT: All right. So continue.

24 MS. HOFF: Thank you, Your Honor. I have no
25 further questions for this witness.

1 THE COURT: All right. Mr. Lang?

2 MR. LANG: I'll be very brief.

3 In case you need the CAFR, I'm going to ask
4 you some questions about the CAFR ending June 30th,
5 2018.

6 THE WITNESS: Okay.

7 MR. LANG: I could give it to you both.

8 MS. HOFF: I'm just not sure that the CAFR was
9 on the scope of direct examination.

10 THE COURT: It wasn't. All we really did was
11 go over this.

12 MR. LANG: No, I'm going to ask about page --
13 about the audit recovery -- the audit recovery that was
14 today and --

15 THE COURT: All right. I'll permit some cross
16 examination and we'll see where it goes.

17 MR. LANG: Would you like to look at it?

18 THE WITNESS: Sure.

19 THE COURT: Do you have a copy for everybody?

20 MR. LANG: Yeah, I gave it to them already.

21 MR. INZELBUCH: We have it. (Out of
22 microphone range) this morning.

23 MR. LANG: Yeah. No, I wanted to give you
24 (out of microphone range), so --

25 MS. HOFF: Oh, he gave us this, yes.

1 THE COURT: Okay. So it's marked P-82.

2 MR. INZELBUCH: (Out of microphone range)

3 MS. HOFF: (Out of microphone range)

4 MR. LANG: I gave you one.

5 MS. HOFF: Thank you.

6 CROSS EXAMINATION BY MR. LANG:

7 Q All right. So this is just very -- two very
8 quick questions, Mr. Ortley. According to the CAFR --
9 well, the CAFR, the fiscal year ending June 30, 2018,
10 at the beginning of the 2018/19 school year, 2,305,605
11 was due to the State for audit recoveries. You can see
12 that on page 31, Register Audit Recovery.

13 THE COURT: Do you see that, Mr. Ortley?
14 Middle of the page.

15 THE WITNESS: Register Audit Recovery -- okay.

16 MR. INZELBUCH: Identify the number.

17 MR. LANG: Oh, this is P-82.

18 THE WITNESS: Okay, I see it here.

19 THE COURT: I think I identified it.

20 MR. LANG: P-82.

21 THE COURT: P-82.

22 BY MR. LANG:

23 Q And if (out of microphone range), there's
24 also, on page 79, the note saying what those are for.
25 But I'm just going to ask you one question -- two

1 questions concerning that.

2 Mr. Ortley, do you agree that this amount is
3 less than 10 percent of the state aid advance amount,
4 the 28,182,090 dollars approved to balance Lakewood's
5 budget for 2018/19?

6 A I'd answer your question by saying that's what
7 this document says. This is the first time I'm looking
8 at it, so I guess --

9 Q Yeah, according to the document.

10 A According to the document, yes.

11 Q Okay. One other question. According to the
12 CAFR here, at the beginning of the 2018/19 school year,
13 17,193,843 dollars in state aid advance loans payable
14 was already due to the State. That's before the 28
15 million.

16 A Uh huh.

17 MS. HOFF: Objection. This goes beyond the
18 scope of direct examination.

19 MR. LANG: No, I'm going to ask about the --

20 THE COURT: It does, but he said he's going to
21 be brief.

22 MR. LANG: It's two questions.

23 MS. HOFF: Okay.

24 BY MR. LANG:

25 Q Do you agree, at that time, at that point in

1 time, that the state aid advanced loans payable amount
2 was already more than seven times the amount due to the
3 State for audit recoveries?

4 A Yes, I agree.

5 MR. LANG: Okay, that's all. Thank you very
6 much.

7 THE COURT: I do have a couple of questions.

8 Do you have any redirect?

9 MS. HOFF: Not based on Mr. Lang's
10 questioning.

11 THE COURT: Okay.

12 BY THE COURT:

13 Q So, Mr. Ortley, if we were to take your
14 numbers as correct -- I have a total -- total number of
15 students in the district as 5,248 -- that's correct?
16 That's the number you came up with?

17 A Yes, Your Honor. Let me --

18 Q So that's totally on the rolls. Those are
19 full-time students, correct?

20 A You're looking at page two?

21 Q Page two.

22 A Five thousand two hundred forty-eight?

23 Q Yes.

24 A Yes, that's correct. That's the total number of
25 students who are identified as on -- on the New Jersey

1 Attendance Registers as being in attendance -- regular
2 attendance at the district.

3 Q Okay. And then on the next page, on page
4 three, the summary came to a total number of 5,233,
5 approximately.

6 A Yes.

7 Q And in the meantime, you noted that the total
8 number of students who were being transported -- let me
9 make sure I have this right -- at that time, OFAC
10 verified 13,678 -- 676.5 students.

11 A Yes.

12 Q Okay. And those students were the regular
13 students that had to be transported and the special
14 education students.

15 A Yes, and they were also all of the non-public
16 students that were being transported.

17 Q Right. And this was not courtesy students'.

18 A No, this is not courtesy students'.

19 Q Okay. So already at that point, there's more
20 than two times the number of students being transported
21 who were actually enrolled in the schools.

22 A That's correct.

23 Q Okay. Was any discussion made with the Board
24 or anybody else at the time about this possibly
25 creating a problem in the future?

1 A Not during this audit cycle because that was
2 outside the parameters of -- of my responsibilities.
3 But it is something that is an ongoing dialogue between
4 the Department of Education and the Lakewood School
5 District.

6 Q Okay. So your audit was really just
7 concerned with accuracy in the numbers?

8 A That's correct, Your Honor.

9 Q So even if we assume that the numbers that
10 you reported, and not the District, were accurate,
11 there's already a more than two times as many students
12 for whom the District is responsible to transport than
13 actually are enrolled in the school system.

14 A Yes.

15 THE COURT: Okay. Any questions based on my
16 questions?

17 MS. HOFF: No, thank you.

18 THE COURT: All right. Thank you.

19 All right, you can step down. Thank you very
20 much, Mr. Ortley.

21 Do you have another witness, Ms. Hoff?

22 MS. HOFF: Not for today, but for tomorrow.

23 THE COURT: Tomorrow.

24 MS. HOFF: Yes.

25 THE COURT: Okay. All right, so we'll see

1 everybody tomorrow morning.

2 MS. HOFF: Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. LANG: Your Honor, tomorrow we only have
6 till three o'clock? Is that --

7 THE COURT: Yes, I have a previous engagement.
8 And as I indicated also, the same issue with Wednesday
9 morning. It may have to be a little bit of a later
10 start.

11 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF }

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4 I, Peggy Wasco, assigned transcriber, do
5 hereby affirm that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of Leonor
7 Alcantara, individually and as Guardian ad Litem for
8 E.A., et al. vs. David Hespe, Commissioner of
9 Education, New Jersey State Board of Education and New
10 Jersey Department of Education, bearing Docket No. EDU
11 11069-14, heard on July 22, 2019 before the Office of
12 Administrative Law Court.
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