

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

LEONOR ALCANTARA, :
Individually and as :
Guardian ad Litem, et al., :
 :
Petitioner, :
 :
-vs- :
 :
DAVID HESPE, Comm. of Ed., :
et al., :
Respondent. :
 :
 :

TRANSCRIPT
OF
RECORDED PROCEEDINGS

February 5, 2018

BEFORE:

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

APPEARANCES:

BY: Arthur Lang, Esq.
BY: Daniel L. Grossman, Esq.
Attorney(s) for Petitioner

OFFICE OF THE ATTORNEY GENERAL
By: Geoffrey Stark, DAG
By: Jennifer Hoff, DAG
By: Lauren Jensen, DAG
By: Lori Prapas, DAG
Attorney(s) for Respondent

By: Michael Inzelbuch, Esq.
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1 THE COURT: We're on the record. This is the
2 matter of Leonor Alcantara, et al. vs. David Hespe, et
3 al, and it's our docket number EDU 11069-14.

4 Your appearances, please, counsel.

5 MR. LANG: Arthur Lang for petitioners.

6 MR. GROSSMAN: Daniel Grossman for
7 petitioners.

8 THE COURT: Thank you.

9 MS. HOFF: Jennifer Hoff, Deputy Attorney
10 General, on behalf of State respondents. Also with me
11 are Lori Prapas, Deputy Attorney General, Geoffrey
12 Stark, Deputy Attorney General, and Lauren Jensen,
13 Deputy Attorney General.

14 THE COURT: Okay. So we have a full house.

15 MR. INZELBUCH: And Michael Inzelbuch, here as
16 participant.

17 THE COURT: Thank you, Mr. Inzelbuch.

18 All right. What is the official title of
19 this case?

20 MR. LANG: Your Honor, could I approach the
21 bench and I'll just give you the --

22 THE COURT: You can just read it into the
23 record, Mr. Lang.

24 MR. LANG: Leonor Alcantara, Individually and
25 as Guardian ad Litem, for E.A., Leslie Johnson,

1 Individually and as Guardian ad Litem for D.J., Juana
2 Perez, Individually as Guardian ad Litem for Y.P.,
3 Tatiana Escobar, Individually, and Ira Schulman,
4 Individually and as Guardian ad Litem for A.S., the
5 petitioners vs. David Hespe, Commissioner of the New
6 Jersey Department of Education, the New Jersey State
7 Board of Education, and the New Jersey Department of
8 Education, respondents.

9 THE COURT: All right. Thank you. All right,
10 so when are we going to hear testimony from the
11 petitioners?

12 MR. LANG: In about five minutes. Could I
13 have five minutes just to open?

14 THE COURT: Yes, I just want to know -- the
15 petitioners themselves.

16 MR. LANG: Oh, the petitioners are not going
17 to come.

18 THE COURT: They're not going to come.

19 MR. LANG: No.

20 THE COURT: Okay. All right. So, yes, now's
21 your time to open, Mr. Lang.

22 MR. LANG: Yes.

23 THE COURT: Mr. Grossman, are you going to be
24 opening as well --

25 MR. GROSSMAN: No.

1 THE COURT: -- or just assisting?

2 MR. GROSSMAN: No.

3 THE COURT: All right. Thank you.

4 MR. LANG: The heart of this matter is that
5 Lakewood has 31,000 non-public students and 6,000
6 public school students, which means it's essentially a
7 district of 37,000 students. The SFRA sets the funding
8 and the requirements necessary to meet the
9 constitutional standard of a thorough and efficient
10 education based on enrollment, so it comes up with an
11 amount necessary to educate 6,000 students. What it
12 does not anticipate is having a non-public population
13 demanding or that is mandated services -- the non-
14 public population that is actually five times more than
15 the public population -- 31,000 vs. 6,000. The mandate
16 it services are an AFTA legislature from -- going back
17 to the 1940's, requiring districts to provide remote
18 transportation for students that live more than two and
19 a half miles from high school, and in younger grades,
20 two miles. This is a statute that's been around almost
21 -- like for three quarters of a century. And secondly,
22 for students out of that entire population of 37,000
23 children, every single one of them has the United
24 States constitutional right -- the constitutional right
25 under the United States Constitution, the 14th Amendment

1 Equal Protection Clause, and a federal right under
2 federal law under the Individuals With Disabilities
3 Education Act and for the District for free and
4 appropriate education, should they decide to do so.
5 Most of the 31,000 students -- in fact, I can tell you,
6 pretty much none of them -- will enter the District
7 unless they have very, very severe disabilities. These
8 students that enter the District with the most severe
9 disabilities drain off about 31 million dollars from
10 the District. Transportation drains off 27 million --
11 26 million, 27 million -- a number like that -- the
12 business administrator will testify to. So we're
13 talking about anywhere up to 40 percent, 50 percent of
14 the adequacy budget is spent on non T&E purposes.

15 Now, the SFRA requires, as we know, an
16 adequacy budget. It's divided up between the state and
17 local taxpayers. The local taxpayers are limited in
18 their capability of supporting education in Lakewood
19 because it's one of the lowest income towns in the
20 state. Lakewood is 555th out of 564 ranking in per
21 capital income, median income -- all the evidence of a
22 low income municipality. On top of that, local
23 property taxes cannot be increased more than two
24 percent a year. The State had sent a monitor in to try
25 to correct Lakewood's finances four years ago, at the

1 time that we filed this case, and the finances get
2 worse every single year. Lakewood has had to borrow
3 about -- last year, 8.5 million -- before that, a
4 little bit over five million dollars -- just to
5 maintain the programs that it had previous -- in the
6 previous years just so it doesn't -- they don't -- the
7 Board of Education should not fire over 100 teachers --
8 large numbers of teachers -- just to maintain a program
9 that petitioners said from the beginning was already
10 unconstitutional.

11 So, basically -- I'm sorry for saying
12 "basically," but the legal argument is like this. The
13 calculation of the costs of educational adequacy in
14 Lakewood fails to reflect the actual mandated expenses
15 necessary for the system of free and public schools,
16 thereby depriving the children of Lakewood their
17 constitutional right to a thorough and efficient
18 education. This is a constitutional right under the
19 New Jersey Constitution and has been supported by
20 Supreme Court decisions Robinson, Abbott, and -- just
21 Robinson and Abbott.

22 Respondents, the State, calculates that
23 adequacy budget in Lakewood as 117 million. That is
24 how much money, under the SFRA, is necessary to give
25 the students of the public schools in Lakewood, the

1 6,000 students, a thorough and efficient education.
2 They don't get that money because close to 60 million
3 is drained off the budget. Respondents fail to include
4 the cost of providing transportation of and a free and
5 appropriate public education for special needs students
6 in a base population five times the number of children
7 counted -- five times the number of students that the
8 SFRA counts. We don't dispute the SFRA. When the SFRA
9 says you need 117 million to educate the students of
10 Lakewood, we don't dispute that. The SFRA has been
11 ruled constitutional in its parameters for calculating
12 the number -- the amount needed, the funding needed for
13 educating students in New Jersey. It's the application
14 of the SFRA in the fact that the SFRA does not
15 anticipate the kind of district that you have in
16 Lakewood and the expenses. Some of these expenses are,
17 as I mentioned, constitutional, that the legislature
18 has no possibility of getting around. Those are
19 expenses that are mandated by the federal constitution.
20 Other expenses, like the bussing, have been on the
21 statute books for close to a century. That's the
22 transportation.

23 The failure to include the expenses of
24 serving the unique demography of Lakewood in the
25 adequacy budget has caused significant budgetary

1 deficits, low teachers' salaries, the elimination of
2 courses and programs, and unacceptably low test scores
3 and low enrollment in post-secondary institutions. So,
4 that is the bottom line. The kids of Lakewood are not
5 getting the appropriate education. Because when
6 everything's said and done, when the dollars are
7 counted, the bottom line is, are these kids getting
8 T&E, a thorough and efficient education?

9 But to make matters worse, that would be a
10 sufficient argument even if Lakewood was a wealthy
11 district or a suburban district, but Lakewood is not.
12 Lakewood is almost like an Abbott on steroids, if you
13 pardon my expression, which is a cliché. Lakewood has,
14 as I mentioned before, one of the lowest per capita
15 income. It has close to 90 percent of the kids --
16 although the numbers have gone down in years because
17 the school-wide program that Ms. Winters will testify
18 to later, why it will go down, but still significantly
19 high. Seventy-five percent of the kids are free and
20 reduced lunches. Under the statute, under SFRA, these
21 are considered at-risk kids. These are kids in need.
22 In other words, that's what the SFRA used to kind of
23 like universalize Abbott, by including this at-risk
24 calculation. Lakewood is up there with as many or more
25 at-risk kids as any of the urban low-income districts

1 which used to be referred to as Abbott districts.

2 Students in low income urban districts such
3 as Lakewood and the Abbott districts require more
4 funding, the Supreme Court has said time after time,
5 just to make the playing field level. They can't
6 guarantee that these kids will succeed, but at least
7 they are entitled to a level playing field. More money
8 is needed for urban, low-income districts. Lakewood
9 is funded substantially lower than every urban low-
10 income, low income district. And finally, the tax base
11 of Lakewood does not have the capacity to fill the
12 deficiency in its adequacy budget. As I mentioned
13 before, Lakewood is one of the lowest income
14 municipalities in the state. It's one of the youngest
15 populations. There's only about 30,000 people employed
16 for about, we believe 120,000 people in town. The
17 census puts us at 100,000, but we can talk about that
18 later. It's a very -- lower than any other
19 municipality that I know of. And on top of that, and
20 this is something that we're not going to find in data,
21 but the families of Lakewood, the 31,000 non-public --
22 families that are sending their kids, which make the
23 bulk of the tax base, and spending close to 30 or 40
24 percent of their income just to send their own kids to
25 non-public schools, which would cost the State

1 somewhere around 500 million dollars, and yet, the
2 local fair share would not go up. If every single kid
3 in Lakewood went to the public schools, all 37,000, the
4 adequacy budget and the State funding would be around
5 600 million or 500 million -- somewhere in -- a very
6 high number. It could be even 700 million. And yet,
7 the local fair share will still be -- well, I just
8 found out now it was raised to 102 million. It used to
9 be 86 million, and before that, it was a little bit
10 more, I think. So, that wouldn't change, in terms of
11 the local share, if all the kids went. But they don't.
12 So, the tax base is picking up, together with who knows
13 what else -- maybe donations to the non-public schools.
14 And on top of that, they're one of the lowest income
15 tax bases in the state. So, if the answer -- and on
16 top of that, by statute, you can't raise taxes more
17 than two percent. The State needs to kick in money.
18 And the biggest evidence is, just to maintain the
19 programs as in previous years, with two state monitors
20 or even three at certain times, the finances keep on
21 getting worse.

22 THE COURT: All right. Thank you.

23 Ms. Hoff? Ms. Prapas?

24 MS. HOFF: Sure. We are here today for a
25 simple reason -- to determine if the Department of

1 Education is giving the Lakewood School District enough
2 resources so it can provide its students with a
3 thorough and efficient education. The answer to that
4 question is yes. Yes, the Department of Education is
5 allocating enough resources to Lakewood, and yes, as a
6 result, Lakewood is providing a thorough and efficient
7 education to its students. There is no constitutional
8 provision specifying the minimum dollar amount required
9 to provide a thorough and efficient education.

10 Petitioners talk about adequacy budget as what is
11 necessary to fund Lakewood students, but adequacy is an
12 estimate of what may be necessary to fund Lakewood
13 students.

14 Year after year, district administration, the
15 fiscal monitors, and Department personnel thoroughly
16 review Lakewood's budget, and year after year, the
17 amount of money coming into the district has been
18 certified as sufficient to provide a thorough and
19 efficient education, after making any necessary
20 adjustments and re-allocations. If we (out of
21 microphone range) and a snapshot of Lakewood today,
22 what would we see? We would see a district that is
23 improving on itself and growing in achievement.

24 Lakewood students have consistently shown growth in
25 their state assessment scores over the past three

1 years. Lakewood is meeting the vast majority of its
2 targets under the Every School Succeeds Act, the
3 replacement to No Child Left Behind.

4 In the snapshot of Lakewood, you would see
5 faculty and staff dedicated and trying to make an
6 impact on their students' lives. And just looking at
7 part of the snapshot, through data provided directly
8 from the District to the Department, a significant
9 percent of the high school population is participating
10 in shared time vocational training programs, learning
11 and training for a skilled future. The District also
12 reports the high school to have state of the art
13 instructional areas, including a brand new culinary
14 classroom, TV production studio, better known as Piner
15 Productions, full math labs, two story media center,
16 indoor track above the gymnasium, fashion design
17 studio, recording arts studio, and digital photography
18 studio. The District again directly reports having
19 state-of-the-art (out of microphone range) classrooms
20 in the middle school, letting students use wireless
21 technology, 3D printers, and robots and Apple TV. You
22 would see schools that allow for meaningful
23 opportunities and participation outside of the
24 classroom. Lakewood High School reports having over 50
25 clubs and activities, including a wide range of

1 community service projects as well. You would see an
2 expanding community.

3 Petitioners will talk a lot about population
4 growth in Lakewood Township and the State does not
5 necessarily dispute those demographics, but the
6 evidence will show that the community's growth has
7 yielded a larger tax base to support a relatively and
8 comparatively small public school.

9 Has Lakewood had its challenges in the past?
10 Of course it has. Does Lakewood currently face
11 challenges? Of course it does. Most school districts
12 do have their challenges and the Department is not
13 suggesting that Lakewood does not have its share. The
14 Commissioner of Education has responded to these
15 challenges. The school monitors have been installed in
16 Lakewood School District in order to oversee financial
17 decisions and assist the District in achieving a
18 healthy financial climate. The audits have shown that
19 there have been fewer and fewer recommendations to
20 problems since the time of the fiscal monitors'
21 installation. The fiscal monitors have a wealth of
22 experience and have worked closely with the District in
23 order to improve on past practices and promote
24 financial efficiency.

25 The evidence presented here will show that

1 Lakewood is providing a thorough and efficient
2 education to its public school students. And to the
3 extent that it faces challenges that may impede its
4 ability to provide a thorough and efficient education,
5 the Commissioner can take appropriate remedial measures
6 to ensure it does provide T&E.

7 Thank you.

8 THE COURT: All right. Thank you very much.

9 All right. So, Mr. Lang, your witness?

10 MR. INZELBUCH: The District would like to
11 renew its motion, and we did discuss, all of us, off
12 the record, but to have a full record, to be an
13 intervener in this matter. This case precedes me by
14 many years. It's been going on, to the credit of Mr.
15 Lang and his hard work, but we are sitting here
16 essentially watching two roosters fight, if you will,
17 with us being directly affected the most. A mere
18 participant was a ruling not of This Honor, but of a
19 different court, and just today, it was discussed off
20 the record with everyone in the room why should
21 Lakewood not become an intervenor. I understand, and I
22 must make this record, that delay is a concern, but in
23 all due respect, it is the future of Lakewood Schools
24 that is at hand. The State Department has been
25 subpoenaing Lakewood for records which have been

1 promptly provided. There would be no delay, if the
2 District could present its case, there is no delay in
3 records, because I just saw thousands of pages go last
4 week to the State -- anything that would be presented.
5 But instead, what is happening, and I think it's the
6 State who is taking advantage of the situation, as hard
7 as Mr. Lang has been working, and he is a high school
8 teacher and he's a very good lawyer and dedicated to
9 this case throughout his degree. The OAL is a new site
10 for him and I believe that there would be no delay
11 allowing Lakewood to present its own witnesses, as
12 opposed to Lakewood having witnesses subpoenaed with
13 very little control over what goes on here. That's
14 number one.

15 Number two, there has been a motion filed in
16 Superior Court by Mr. Lang to compel District witnesses
17 to come at certain days and certain times. I did
18 respond to that motion. Mr. Lang and I did discuss
19 this over the weekend and Mr. Lang, myself, and Mr.
20 Grossman -- I want to put this on the record -- came to
21 clarity and it was discussed here today so the State
22 does not later say they don't know. But Ms. Winters,
23 the superintendent, will be here Wednesday at 9 a.m.
24 and Mr. Finger, who is the interim B.A., retired B.A. -
25 - not from even Lakewood, but from Teaneck; prior to

1 that, from Lakewood; and prior to that, the Department
2 -- will be here at 12:30. So the issue of having Ms.
3 Winters is -- I'm not going to debate -- she will be
4 here -- that's what I was told today -- with Mr.
5 Grossman and Mr. Lang. I want this confirmed so I can
6 confirm with them -- nine o'clock and 12:30.

7 The last part I will mention is, there will
8 be no District witnesses here on the 12th. I will be
9 out of the country, as I have just been told this
10 morning at 4:30 a.m., that I am the proud grandfather
11 of my first grandson. District witnesses have a right,
12 even though we're just -- I don't know what we're here
13 on. It's like the PLO we're here -- participant at the
14 U.N., okay? But the bottom line is, there will be -- I
15 cannot be here. I am general counsel. But as
16 discussed with Mr. Lang and Mr. Grossman, despite
17 inconvenience to Ms. Winters and Mr. Finger, they will
18 be here at nine and 12:30 on Wednesday, which is the
19 next court date.

20 MR. LANG: Your Honor, for the record, we went
21 through this and if both parties are opposed to the
22 intervention of the Lakewood School Board, there is no
23 reason to go through this at this point. We went
24 through this with Judge Kennedy. Judge Kennedy ruled
25 that they were not a necessary party. And in addition

1 to that, it's very, very clear -- in fact, if the
2 Lakewood School Board would have filed this case, they
3 would not have standing. When they filed -- when (out
4 of microphone range) was filed, they had to add
5 students. We went through this with Judge Kennedy.
6 It's not the School Board that is the party that is
7 harmed. It's the students. So, if Lakewood would have
8 filed this case, which they didn't, and they -- they
9 only had a way of coming into this case because of my
10 petitioners, my students -- that would have been their
11 jurisdictional hook of getting in to begin with.
12 Lakewood, on their own, does not have standing. Judge
13 Kennedy ruled on this and extensively briefed on this.
14 We've spent a year on this. And now, we're not going
15 to spend another year on this again. As far as we're
16 concerned --

17 THE COURT: All right. Thank you, Mr. Lang.

18 MR. STARK: Your Honor, on behalf of the
19 State, Geoffrey Stark. The State respondents also
20 oppose the motion. We'd like to clarify for the
21 record, Mr. Inzelbuch represented that there were
22 thousands of pages that went out. That may have
23 happened. We have not received those, or if we have,
24 they were received potentially this morning.

25 MR. INZELBUCH: There was a (out of microphone

1 range), because I got --

2 MR. STARK: While we were present, yes. We
3 will recognize that. We just haven't received those
4 documents, and so, we'll --

5 MR. INZELBUCH: Okay. It went out on Friday,
6 so you'll get it.

7 MR. STARK: Okay, so we'll get it today.

8 MR. LANG: Mr. Stark, (out of microphone
9 range.)

10 THE COURT: All right. So --

11 MR. STARK: So, you know, I agree with Mr.
12 Lang's position that this would -- that this would
13 potentially cause a delay in the case. I also think
14 that the time frame of this motion, you know, is
15 suspect in the sense that it's made as we're going on
16 the record in the hearing. Mr. Inzelbuch entered this
17 case admittedly not four years ago or three and a half
18 years ago when the petition was filed, but he did enter
19 this case and filed his appearance on behalf of
20 Lakewood six months ago, in August. This motion was
21 not made at that point. It was not made at any point
22 in between then, and now -- and it's made now at this
23 last minute. I think this motion has to be -- has to
24 be denied. And in the event that -- in the event that
25 the motion were to be granted, we would lose -- we

1 would essentially lose a hearing date because Mr.
2 Inzelbuch is not going to be present on Monday.

3 MR. LANG: Your Honor, can I add also about
4 this -- about the Superior Court? I did file in
5 Superior Court last week and I sent the --

6 THE COURT: What did you file in Superior
7 Court?

8 MR. LANG: To compel the witnesses to come.
9 Okay? There is a lot of --

10 THE COURT: Is there any reason --

11 MR. LANG: -- going on over here with --

12 THE COURT: Is there any reason for you to
13 think they wouldn't come?

14 MR. LANG: Yes.

15 MR. INZELBUCH: On the dates selected, yes.

16 THE COURT: Oh, okay. On the dates selected.
17 I got it.

18 MR. LANG: Beyond that, there are reasons.

19 MR. INZELBUCH: Did we not resolve it today
20 before --

21 MR. GROSSMAN: Those issues have been
22 resolved, Your Honor.

23 THE COURT: Thank you.

24 MR. INZELBUCH: Thank you, Mr. Grossman.

25 THE COURT: Okay.

1 MR. LANG: Your Honor, there is a lot of
2 history behind this that I don't want to get into now.

3 THE COURT: I understand that there's a lot of
4 history behind it. I also understand that when the
5 matter was first filed, there was a request that
6 Lakewood be brought in and that didn't --

7 MR. LANG: There was a motion to dismiss, Your
8 Honor, on the State's behalf, that Lakewood --

9 THE COURT: And that was denied.

10 MR. LANG: -- that Lakewood should be a
11 necessary party. It was our position that Lakewood
12 should probably be a co-respondent in this matter, but
13 that matter was denied or that request was denied.

14 THE COURT: It was denied. And basically, the
15 law of the case so far has been that Lakewood comes in
16 as a participant. I might have decided differently a
17 long time ago, but I'm not going to change it at this
18 juncture, so you can participate, Mr. Inzelbuch. If
19 there's anything that you really feel strongly about,
20 you can certainly talk to Mr. Lang or Mr. Grossman.

21 MR. INZELBUCH: And we've resolved, as I heard
22 Mr. Grossman say, the issue with the appearances. Is
23 that correct, Mr. Grossman?

24 MR. GROSSMAN: It appears we have.

25 MR. INZELBUCH: Thank you.

1 THE COURT: Okay.

2 MR. INZELBUCH: And based on that, I might be
3 following the same track as Mr. Trachtenberg. The
4 Court is not requiring me to be here every day, I
5 assume. I do, as you know, have numerous special ed
6 matters. I am asking, as we speak, Judge Bass to allow
7 me to be excused for Wednesday, based on this. (Out of
8 microphone), someone's ill -- I am getting this all as
9 I sit here. So, hoping that Judge Bass -- I was
10 initially told she is not allowing that matter, which
11 has multiple dates, to be adjourned, but once I send a
12 letter to Judge -- I don't want you to be upset, but
13 once I send out a letter to Judge Jacobsen at Superior
14 Court, saying we've reached an agreement on Wednesday,
15 that should trump Judge Bass' case. But if for some
16 reason, if Judge Bass feels differently, I will advise
17 everyone here.

18 MR. LANG: Thank you.

19 THE COURT: Okay. Thank you. Okay, so now
20 are we ready to proceed?

21 MR. INZELBUCH: Does the District, as a
22 participant -- because I read the Order, which I might
23 have argued differently myself -- does the District
24 have the right to give a brief, less than two minute
25 opening?

1 THE COURT: I'll permit you to do that, Mr.
2 Inzelbuch.

3 MR. INZELBUCH: Thank you.

4 THE COURT: Go right ahead.

5 MR. INZELBUCH: Mr. Lang is absolutely
6 correct. Mr. Lang -- let me give you the exact
7 numbers, which I hear Ms. Hoff, who I have had the
8 pleasure of trying cases before against the State. I'm
9 not too smart, because I'm just a Lakewood graduate --

10 THE WITNESS: Two minutes, Mr. Inzelbuch.

11 MR. INZELBUCH: Yes. As a Lakewood High
12 School graduate, I don't need a lot of testimony, and I
13 don't think this Court should allow it. In the year
14 16/17, the State had to lend four million --

15 THE COURT: You mean school year 16/17.

16 MR. INZELBUCH: Yes, school year 16 --

17 THE COURT: I don't want the reporter writing
18 down the year 1617.

19 MR. INZELBUCH: Of course. The 16/17 school
20 year, the State had to lend the District -- lend --
21 four million, 353,898. In the 15/16 school year, the
22 State had to lend the District six million, 824,592.
23 In the school year 14/15, the State had to lend the
24 District two million, 952,396. In the school year
25 13/14 -- six million, 66 -- 066,945. You need not be a

1 math genius to know that a loan has to be repaid. You
2 need not need to be a math genius to know that the
3 State is lending money for the District to be able to
4 provide a T&E education. This coming year alone -- and
5 you will hear this if Mr. Lang -- which, again, I don't
6 think we should be relegated to observer, but so be it
7 -- Mr. Finger, who is an interim B.A., will tell you
8 that this coming year alone, if everything stays the
9 same in the budget, we will need an additional 14 to 20
10 million dollars to provide a thorough and efficient
11 education. And in all due respect to Ms. Hoff, who I
12 actually enjoy being with and have a very cordial
13 relationship with, you can't -- yes, Ms. Winters, who
14 will testify, eventually signs every year there's a T&E
15 budget, but that typically is after a busload of kids,
16 that I'm proud to say I thought of and sponsored, to go
17 to Trenton to protest and then miraculously, the stake
18 is 8.5 million, and then she does sign a sheet saying
19 "thorough and efficient." This coming year, it will be
20 clear, if the District doesn't get -- which is on the
21 website, which there was a presentation at last year --
22 at last week's budget -- if the State does not get 14
23 to 20 million dollars, there will be no T&E.

24 As far as the state monitors, who I consider
25 friends, who recommended me for my current position, I

1 might add, in writing -- check the website -- these
2 monitors -- this has -- they are good people. They
3 tried to clear up issues. But since they're here, it's
4 undisputable, the District has gone further and further
5 into deficit lending, loaning, borrowing, and that is
6 not -- it's not their case. Because as Mr. Azarra says
7 publicly, it's a revenue problem; it's not a spending
8 problem, and those two are not the same. If we were
9 spending incorrectly, Mr. Azarra would be the first one
10 to override the Board and say you can't spend this, and
11 that's his power, to some degree. But revenue, he has
12 said publicly, is the issue. We don't have enough
13 money.

14 Let me give you one last thing, which will be
15 testified to. Again, we are at the mercy of others to
16 have the testimony come in here, which is absurd -- not
17 directed at this Court, but at a prior. Let me give
18 you the most telling example. Non-public mandated
19 bussing -- by the way, feel free to watch the Asbury
20 Park Press, where we were interviewed last week, video.
21 We do not provide courtesy bussing to anyone. That was
22 a decision by Judge Metzger many years ago. Lakewood,
23 how could you come here? You provide all this courtesy
24 bussing. There is not one kid -- public, non-public,
25 Jewish, white, or green -- who gets courtesy bussing in

1 Lakewood. That's a thing of the past. Who do get
2 courtesy bussing -- funny enough -- are public school
3 students who live less than the two and two and a half
4 miles, which is paid for by the Township -- the
5 Township, not the Board of Ed -- to the tune of 1.4 to
6 1.5 million. So the only students who are getting
7 courtesy bussing, but not paid for by the Board, is the
8 -- is a public population, which I fully support, as
9 does the Board, because these children need to get to
10 school. The non-public students, the only money the
11 District pays for -- and Mr. Azarra, he can either
12 testify to it or I could read in his e-mails -- but Mr.
13 Azarra will tell you, every non-public mandated kid
14 more than two or two and a half miles, based on a state
15 law which created the LSTA, which is a non-public
16 bussing consortium the governor passed -- Governor
17 Christie, to his credit -- the Board of Ed pays 1,000
18 dollars to the state entity called the LSTA -- give me
19 a second -- for every non-public child. We, as a
20 Board, do not pay for one courtesy child. Now, does
21 the LSDA bus courtesy children? Absolutely. Not at
22 our toll. Not at our dollar. Not from our budget.

23 But let me tell you the rest of the story, just on
24 that issue, on the bussing. Mr. Finger, if asked --
25 because, again, I am a (out of microphone range) here

1 to a case that affects my client more than anyone else
2 -- but Mr. Finger will testify, if asked -- because I
3 can't ask him anything unless we may be allowed that --
4 despite the State giving millions of dollars of aid
5 regarding non-public bussing, the District budget for
6 mandated, required by law, will, this coming year, use
7 approximately 14 million, 624,174. Let me repeat that
8 -- 14 million, 624,174. How do we arrive at that? The
9 projected cost, which is on the website, which was
10 discussed in public, for non-public mandated -- the
11 law, as this Court is aware, whether you're public or
12 non-public, if you live more than two or two and a half
13 miles, you get bussing. Yeshiva, Clifton Avenue, Holy
14 Family -- you get bussing. The projected cost is 23
15 million, 256,328. You subtract state aid, which is
16 about three million. You subtract additional non-
17 public state aid, about five million, 560. The net
18 cost to our public budget is 14 million, 624,174.

19 Now, someone could argue this happens in
20 Teaneck, too. This happens in Englewood. This happens
21 in other places where there are large non-publics
22 mandated. But no other district has 30,000 -- you want
23 to call it 29,000. The DOE has their numbers. I got
24 it off their website. When you times that by kid, we
25 are short 14 million. We have to bus them.

1 Let me give you one more statistic and then
2 you can have statisticians here and everyone can do
3 everything and I can sit here, which I, with your
4 permission, am not going to -- okay -- let me give you
5 one last example. All I hear from the State and others
6 is why do we send so many kids out of district. Why?
7 Whether the number is 400, the Shy School, this school,
8 that school, the Center for Education, which
9 eventually, when we sue the State, we got their
10 license. I'll tell you why. Preschool -- you're going
11 to fall off your chair relatively or figuratively --
12 preschool, we have approximately 198 self-contained
13 kids in our preschools. We have no room. We have
14 eight seats left. (Out of microphone range) that's an
15 approximate number. The State is aware of this. So
16 that means, when a kid turns three -- which, by the
17 way, kids are turning three as we speak -- when a kid
18 turns three, whether his name is Juan, Jose, or Yaccov,
19 and he has significant issues, whatever that is, he has
20 the right to be found eligible, classified, and get an
21 IEP. We, as a district, have to offer these children
22 an IEP. Most of these children who come to the public
23 district are significantly involved. This Court, as a
24 matter of judicial record, has seen that. Diseases
25 we've never heard of. (Out of microphone range) -- we

1 have more than the entire state combined. And then
2 they come to the public school and say, "We want a
3 spot." Whether they would come or not is not the
4 issue, but eight seats left for the entire year. And
5 as I said publicly, where do we send them? Well, we
6 have no room in our schools. Of course, the State says
7 and the monitor says -- who I like and agree with --
8 build buildings. You need cash for that. You need
9 cash for that. So, if you can't build buildings,
10 you're not telling Yaccov, Johnny, or Jose, "Well, we
11 have no room." Guess where they go? The Shy School.
12 Guess where they go? The Center for Education. Guess
13 where they go?

14 So I say this to you in closing. You're
15 going to hear a lot of "I don't know," but the only
16 people affected by this are the Board of Education, who
17 can't produce a thorough and efficient education, as
18 proven. The State, which is bankrupt, doesn't have
19 money to the tunes we're talking about as loans. They
20 wouldn't give it. And I have to say this and then I'm
21 done. We're schnuras (phonetic) here. I'm hearing Mr.
22 Lang say, "Maybe I'll call Shafter, monitor. Maybe
23 I'll call monitor Zarrows," -- who I love dearly,
24 recommends me, who is sick at home. But let us not
25 fool ourselves. In January, being sick at home, got

1 paid 5,280 dollars. So, I cannot imagine that the
2 monitors cannot be made available and I beg Mr. Lang, I
3 beg him, because I'm a beggar here, and you know I
4 don't do well with that, that he not shorten this
5 trial, but please make every arrangement to have David
6 Shafter, state monitor --

7 THE COURT: All right.

8 MR. INZELBUCH: -- and Mike Azarra here.

9 Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Inzelbuch.

11 Okay, so now are we ready to commence?

12 MR. LANG: We are.

13 THE COURT: Or is everybody going to say it's
14 lunchtime?

15 MR. LANG: Can we start?

16 THE COURT: I'd rather start, but you know,
17 some people have conditions where they do have to eat
18 and stuff, so --

19 MR. LANG: (Out of microphone range)

20 MR. INZELBUCH: (Out of microphone range)

21 THE COURT: Yes? Ready?

22 MR. LANG: If you want to start and go until
23 one. I don't know if anybody --

24 THE COURT: Yeah, about one, 1:15.

25 MS. HOFF: That would be perfectly fine. One

1 of our deputies may have to leave for personal reasons.

2 THE COURT: Okay. That's fine.

3 MS. HOFF: Do you have an objection to that?

4 MR. LANG: No, I don't. I just would like --
5 I just would like to take a five minute break before we
6 start.

7 THE COURT: Of course. Go right ahead.

8 MR. LANG: Thank you.

9 THE COURT: We'll go off the record then.

10 (BRIEF RECESS)

11 THE COURT: All right. So, we're back on the
12 record.

13 Ms. Hoff?

14 MS. HOFF: Before the witness is called,
15 because there are multiple of us and so forth, I'm just
16 trying to clarify, in terms of objections, whether the
17 people who are currently seated at counsel table can
18 make objections or whether you want the person who's
19 doing the cross examination to make the objection.

20 THE COURT: I prefer to do it that way --
21 whoever is asking the questions.

22 MS. HOFF: I thought so. I just wanted to --

23 THE COURT: Otherwise, it gets --

24 MS. HOFF: Messy.

25 THE COURT: Yes, and the transcript becomes

1 even more messy.

2 MS. HOFF: I understand.

3 THE COURT: Okay, so --

4 MR. LANG: Your Honor, I'm going to probably
5 be doing the examination on Wednesday and I'm kind of,
6 like, new at this. Would it be okay if Mr. Grossman --

7 THE COURT: I think you can manage.

8 MR. GROSSMAN: Your Honor, I think we'll work
9 it out.

10 THE COURT: I think you will, too. Thank you,
11 Mr. Grossman.

12 All right. So, your witness is?

13 MR. LANG: Dr. Ross Haber.

14 THE COURT: Dr. Haber.

15 MR. LANG: Your Honor, Dr. Haber is -- just
16 for purposes --

17 THE COURT: Don't sit down yet, Doctor.

18 MR. LANG: Dr. Haber is going to be offered as
19 an expert demographer.

20 THE COURT: Could you raise your right hand,
21 please?

22 R O S S H A B E R, PETITIONER'S WITNESS, SWORN.

23 THE COURT: Just state your name.

24 THE WITNESS: Ross Haber.

25 THE COURT: Spell your last name for the

1 record.

2 THE WITNESS: H-A-B-E-R.

3 THE COURT: All right. Sit down. You see
4 there's a microphone by you? Everything is recorded,
5 so you have to answer verbally. You can't shake your
6 head or anything like that. "Uh hums" -- those don't
7 work.

8 All right. So, Mr. Lang, Mr. Grossman --
9 whoever is doing it. Mr. Grossman --

10 MR. GROSSMAN: Thank you, Your Honor. Dr.
11 Haber is, for the record -- Your Honor, I have a --

12 THE COURT: A CV?

13 MR. GROSSMAN: Well, a little bit of a vision
14 problem, so I was wondering if I might sit during my --

15 THE COURT: Oh, yes, of course. But do you
16 have --

17 MR. GROSSMAN: I think we have his CV here.

18 THE COURT: Okay. Is that marked for --

19 MR. GROSSMAN: No, it hasn't been marked.

20 THE COURT: Are you offering the doctor as an
21 expert?

22 MR. GROSSMAN: Yes.

23 THE COURT: Okay, so we'll have his CV.

24 MR. GROSSMAN: And I have to apologize because
25 I thought I had an extra.

1 Your Honor, if I may approach?

2 THE COURT: Yes. You have to go around. They
3 put this thing, I guess, so nobody attacks the bench.

4 MR. GROSSMAN: We haven't pre-marked this one.
5 I have to mark this as P -- mark that as P-20.

6 THE COURT: P-20. All right. P-20, CV of
7 Dr. Haber. Okay, so --

8 (P-20 Marked for
9 Identification)

10 MS. HOFF: May I see a copy of that, also?

11 MR. GROSSMAN: Oh, I only have the one that's
12 been provided.

13 MS. HOFF: I just want to (out of microphone
14 range.)

15 THE COURT: All right. P-20 -- CV. Is it the
16 same, Ms. Hoff?

17 MS. HOFF: Yes, Your Honor. It's the same.

18 THE COURT: All right. Thank you.

19 Mr. Grossman, go ahead.

20 DIRECT EXAMINATION BY MR. GROSSMAN:

21 Q Dr. Haber, would you please tell us what you
22 do for a living?

23 (Whereupon someone enters the courtroom)

24 MS. HOFF: Objection. One moment, just
25 because a new witness has entered in the courtroom. I

1 guess we forgot to make a motion for sequestration.

2 THE COURT: Yes, that's what I expected.

3 MR. GROSSMAN: No objection, Your Honor.

4 THE COURT: So, if you would just mind waiting
5 outside, please. Thank you.

6 Okay.

7 (Whereupon witness exits the courtroom)

8 BY MR. GROSSMAN:

9 Q Dr. Haber, what (out of microphone range)?

10 A Currently, I'm a demographic consultant.

11 Q And how long have you been doing -- first of
12 all, what does that mean?

13 A Specifically, I work with public school districts
14 and help them with things such as enrollment
15 projections, demographic studies, looking at different
16 populations in the schools and (out of microphone
17 range) projections.

18 Q How long have you been doing that?

19 A About 25 years.

20 Q And how many school districts have you worked
21 for?

22 A Probably in the area of 200. Probably in the area
23 of about 200 and about 125 in New Jersey alone. And in
24 that, I've done about 300 studies, because a lot of my
25 business is repeat business.

1 Q And what's your educational background?

2 A I've got a master's degree in curriculum teaching
3 from Teachers College, Columbia University. I have a
4 doctorate in educational administration from Teachers
5 College, Columbia University.

6 Q And have you ever testified as an expert
7 witness before?

8 A Maybe once or twice. Probably two times, yeah.

9 Q And where?

10 A Lower Merion, Pennsylvania; it was a desegregation
11 case. And Pascack Valley Regional; it was a funding
12 case.

13 Q Was the -- sorry -- Pascack Valley, do you
14 know whether it was Superior Court, Office of
15 Administrative Law, or Federal Court?

16 A I don't -- I don't remember.

17 Q Okay.

18 A Well, it's state ed department, so I just don't
19 remember.

20 Q Okay. Do you engage in continuing study of
21 demographics?

22 A Do I -- yeah, I'm currently doing that. You know,
23 I currently have clients, if that's what you mean.

24 Q Yes.

25 MR. GROSSMAN: Your Honor, I would offer Mr. -

1 - I'm sorry -- Dr. Haber as an expert in demographics.

2 THE COURT: Okay. Any cross examination as to
3 his qualifications or do you accept him as an expert?

4 MS. HOFF: Your Honor, we would object to him
5 testifying as to anything beyond page six of his
6 report. We don't necessarily object to his being
7 qualified as an expert in demographics. If I could --
8 can I challenge him -- his qualification?

9 THE COURT: You can. That's what -- this is
10 what voir dire is for.

11 VOIR DIRE EXAMINATION BY MS. HOFF:

12 Q Dr. Haber, you hold a degree in curriculum
13 and teaching. Is that correct?

14 A A master's degree in curriculum and teaching; a
15 doctorate in ed administration.

16 Q And you were issued a principal standard
17 certificate in January of 1976?

18 A Yes, I did.

19 Q You were never issued a school
20 administrator's certificate?

21 A I have a -- I have a New York State
22 superintendent's certificate.

23 Q But you were never issued a school
24 administrator certificate in the State of New Jersey?

25 A Yes, I have a principal's certificate in the State

1 of New Jersey. I was -- I was a principal of Hillside
2 High School.

3 Q But you were never issued a superintendent's
4 certificate in the State of --

5 A I'm sorry. I can't hear you.

6 Q You were never issued a superintendent's
7 certificate in --

8 A Not in New Jersey. I never applied for one.

9 Q You were never issued a school business
10 administrator's certificate in the State of New Jersey?

11 A No.

12 Q And so, you were not an SBA.

13 A No, I'm not.

14 Q And you never were an SBA.

15 A No.

16 Q In fact, the only administrator's certificate
17 you've ever been issued, as you've testified, is the
18 principal's certificate. Is that correct?

19 A That is correct.

20 Q And you never served as the superintendent of
21 a school district?

22 A No, I never have.

23 Q And you don't hold a bachelor's degree in
24 accounting?

25 A No, I don't.

1 Q And you don't hold a master's degree in
2 accounting?

3 A No, I don't.

4 Q And you never earned any accounting degree?

5 A I'm sorry?

6 Q You've never earned a degree in accounting.
7 Is that correct?

8 A No.

9 Q You don't hold any degrees in finance?

10 A No.

11 Q And you don't hold any degrees in statistics?

12 A No.

13 Q And you've never been issued a certified
14 public accountant license?

15 A No.

16 Q So you aren't a CPA.

17 A No, I'm not.

18 Q And you've never been issued a certified
19 government financial manager license?

20 A No.

21 Q So you aren't a certified government
22 financial manager.

23 A No.

24 Q And you don't have a juris doctorate degree?

25 A No, I don't.

1 Q So you don't hold a license to practice law.

2 A No.

3 Q And you aren't a lawyer.

4 A I am not a lawyer.

5 Q So, you served as a principal at Hillside
6 High School in New Jersey. Is that correct?

7 A Correct, Union County.

8 Q And that's in the Hillside Public School
9 District?

10 A Yes.

11 Q And when you served as principal at Hillside
12 High School, the school was not a single district
13 school. Is that correct?

14 A Say again.

15 Q When you were a principal at Hillside High
16 School, it was not a single district school. Is that
17 correct?

18 A Hillside is its own independent school -- it's
19 Hillside Public Schools. I'm not sure how to answer
20 that. It's the Hillside School District. It's, you
21 know, high school, middle school, four elementary
22 schools.

23 Q Right. So it's not like one school, like a
24 high school that's its own district. It has --

25 A No, no, no. It was a -- no, it was -- yeah.

1 Q Okay. Thank you. And Hillside is not an
2 Abbott District. Is that correct?

3 A There were no Abbott Districts when I was
4 principal there.

5 Q Okay. As principal of Hillside High School,
6 your job duties were to manage the day-to-day
7 operations of the school.

8 A That's correct.

9 Q And you didn't manage any day-to-day
10 operations of the school district.

11 A No.

12 Q That would have been the superintendent's
13 job?

14 A I was not superintendent.

15 Q Okay. And it would have been the
16 superintendent's job to manage the --

17 A Oh, the answer to the question is yes.

18 Q Okay. And you also served for a period of
19 time as a principal at Uniondale High School in New
20 York State? Is that correct?

21 A Correct.

22 Q And your job there was to manage the day-to-
23 day operations of the school.

24 A Correct.

25 Q You never served as a superintendent in New

1 York State.

2 A No.

3 Q And you never served as an SBA in New York
4 State.

5 A No.

6 Q And you were never employed by a private
7 school or approved private school for students with
8 disabilities in New Jersey.

9 A No. Well, I interned -- actually interned in a --
10 I interned in a -- going way back to 1967 -- in a
11 school for students with special needs, but I was just
12 a teacher. Not just a teacher; I was a teacher.

13 Q And you never worked in any of the New Jersey
14 Executive County Superintendents' Offices?

15 A No.

16 Q And you've never worked -- you've never been
17 employed at the Department of Education's Office of
18 School Finance. Is that correct?

19 A No.

20 Q And you are the founder of Ross Haber
21 Associates?

22 A That's correct.

23 Q So, districts retain you, as you've
24 testified, to project enrollment for purposes of
25 whether the district will have enough physical space to

1 fit the number of students expected to populate the
2 school in the future. Isn't that --

3 A Amongst other things, yes.

4 MS. HOFF: Okay. So, at this point, Your
5 Honor, I would move to bar any portions of his
6 testimony that relate to budget forecasting or the
7 forecasting and projection of state aid, because he's
8 not --

9 THE COURT: This is just -- do you accept him
10 as somebody that can testify as to demographics?

11 MS. HOFF: As to the demographic, yes, but we
12 would move to not --

13 THE COURT: Okay. We'll get to the report
14 later.

15 MS. HOFF: Okay.

16 THE COURT: Okay. Do you accept him as an
17 expert in the area of demographics?

18 MS. HOFF: Yes.

19 THE COURT: Okay. So, he'll be accepted as an
20 expert in the area of demographics.

21 BY THE COURT:

22 Q I do have a question. What is your
23 background in demographics? How did you come to do
24 this?

25 A It's kind of a circuitous story, but I actually --

1 I was involved -- I got involved with a company,
2 towards the end of my career in education, that was
3 involved with doing a -- (out of microphone range)
4 computerized transportation software. And in
5 developing that software, as an ancillary -- ancillary
6 to that project, we found that that subject or that
7 software could be used to re-district school districts.
8 Okay? You know, change attendance zones -- that kind
9 of things. But in doing that, I also felt that -- I
10 also started to feel that if you're going to change
11 attendance zones, you should be able to project -- you
12 should be able to project enrollment, so when you make
13 a change in an attendance zone, you know it's going to
14 last for a number of years. As a result of that, I
15 interned with a person in New York State who had done a
16 large number of statistical study -- of enrollment
17 projections, and learned the Cohort Survival Method of
18 projection, which is the standard used by most -- by
19 most school demographers. And through practice and
20 through working with other individuals, I learned to do
21 this. So, my expertise is in the area of Cohort
22 Survival Projections and other things that affect
23 projections, such as new housing construction,
24 residential construction, housing sales, and all of
25 those things that are a part of that.

1 I also did a lot of studying on how the U.S.
2 Census projects -- projects populations, how they look
3 at different kinds of populations in areas. So, my
4 experience -- and I've done, as I've said, well over
5 300 studies, so it was learned and then experiential.

6 Q All right. Thank you.

7 A I hope that answered the question.

8 Q It does. Okay. So most of what you do
9 essentially deals with enrollment projection?

10 A I do four things, okay? I do four things. I do
11 enrollment projections. I do re-districting. Re-
12 districting is the process of finding alternative
13 attendance zones for schools, move populations around,
14 low population schools to high population schools,
15 opening schools, closing schools, identifying where new
16 schools may need to be built. I do facility
17 utilization. I work with architects, in terms of doing
18 analysis for space in buildings, classroom space and
19 things like that. And we also do transportation
20 efficiency studies. They're all kind of inter-related.
21 You know, you do an attendance zone analysis -- what's
22 transportation going to cost, how many buses are you
23 going to need.

24 So, those are the four major things I do --
25 enrollment projections, redistricting, facility

1 analysis, and transportation efficiency.

2 THE COURT: All right. Thank you.

3 All right, Mr. Grossman.

4 MR. GROSSMAN: Yes.

5 DIRECT EXAMINATION BY MR. GROSSMAN (CONT'D):

6 Q Dr. Haber, did you perform a study in --
7 pertinent to Lakewood?

8 A Yes, I did.

9 Q What was your -- briefly, what were you asked
10 to do?

11 A I was asked to do -- I was asked primarily to
12 identify population growth between the -- in the public
13 schools and in the non-public schools in the district,
14 to do a historical analysis, and a five year
15 projection.

16 Q And did you generate a report?

17 A Yes, I did.

18 Q And what did you --

19 MR. GROSSMAN: Your Honor, if I may, I will
20 offer --

21 BY MR. GROSSMAN:

22 Q Well, would your report be helpful in giving
23 further testimony?

24 THE COURT: Do you need your report to refer
25 to and --

1 THE WITNESS: I'm sorry? Say that again?

2 BY MR. GROSSMAN:

3 Q Do you need your report to refer to?

4 A I have it in front of me.

5 MR. GROSSMAN: Your Honor, if we may have it
6 marked as P-21?

7 THE COURT: For identification?

8 MR. GROSSMAN: Yes.

9 THE COURT: Yes.

10 (P-21 Marked for
11 Identification)

12 Do I have a copy?

13 MR. INZELBUCH: Do I, as a participant, get
14 anything?

15 THE COURT: You can get copies.

16 MS. HOFF: And so, I would also like to get a
17 copy of this. I understand that it was revised most
18 recently, like 7:45 this morning, and I have not had an
19 opportunity to look at the most revised copy of the
20 report yet.

21 MR. GROSSMAN: I don't think I have the most
22 revised report either.

23 MS. HOFF: And we would object --

24 MR. INZELBUCH: Mr. Lang, was this revised at
25 7:45 this morning?

1 MR. LANG: (Out of microphone range)

2 MS. HOFF: And if it's that version, I'm going
3 to object to that being entered into evidence because
4 we haven't had an opportunity to review that. I have,
5 you know --

6 MR. GROSSMAN: It still can be marked for
7 identification.

8 MS. HOFF: (Out of microphone range) the
9 revision.

10 THE COURT: Well, let's make sure everybody's
11 got the same report. Maybe we should take a break for
12 lunch right now?

13 MR. GROSSMAN: Yeah, I think that would be a
14 good idea.

15 THE COURT: I think that's a good idea. I'll
16 see everybody around --

17 MR. INZELBUCH: Your Honor, just while we're
18 on the record --

19 (RECORDING PAUSED)

20 THE COURT: Wait, wait, wait, wait.

21 MR. INZELBUCH: You have no problem with the
22 participant not being here after lunch?

23 THE COURT: No, you can certainly leave, Mr.
24 Inzelbuch.

25 MR. INZELBUCH: Thank you. I just wanted to

1 make sure. Thank you.

2 THE COURT: All right.

3 (LUNCHEON RECESS)

4 THE COURT: All right. So we're back on the
5 record. We're back on the record. All right, so shall
6 we continue? We were just talking about P-21, which --
7 I don't know what it is, but, P-21.

8 MR. GROSSMAN: We had -- P-21 was Dr. Haber's
9 report and there was a question --

10 THE COURT: Question about whether it was
11 updated, even today?

12 MR. GROSSMAN: Yes, yes. So, I think -- I
13 believe that everybody has the same copy now.

14 THE COURT: Except I don't.

15 MR. GROSSMAN: You don't.

16 THE COURT: Do you have the same copy, Ms.
17 Hoff? Ms. Prapas?

18 MS. HOFF: We have the copy that they just
19 provided us that was from this morning.

20 MS. PRAPAS: Yes.

21 MR. GROSSMAN: Can I approach the bench?

22 THE COURT: Yes. And does the witness have
23 the same copy? That would be helpful to know if the
24 witness has the same copy.

25 MR. GROSSMAN: Dr. Haber, do you have the same

1 copy, the copy that you updated?

2 THE WITNESS: What's the date on the header of
3 that one? Is it November 17th?

4 MR. GROSSMAN: Yes.

5 THE WITNESS: Okay, well --

6 THE COURT: I bet they're all that date,
7 right?

8 MS. HOFF: Yes, (out of microphone range)
9 November 17th.

10 THE WITNESS: Yeah, that was the date of the
11 original report.

12 MS. HOFF: Right. No, no --

13 THE WITNESS: Yeah, okay. I just wanted to
14 make sure that I have --

15 DIRECT EXAMINATION BY MR. GROSSMAN (CONT'D):

16 Q Just so we know what you did, would you tell
17 us what you did to -- what the update was?

18 THE COURT: Why don't we start with what he
19 did in the first place?

20 BY MR. GROSSMAN:

21 Q What was -- well, I -- what did you -- what
22 did you do that you had to update?

23 A On this report?

24 Q Yeah.

25 A It was a financial section. It was one -- the

1 only thing updated was there was a row that was
2 misaligned and that was -- that was the only update I'm
3 aware of. The demographics weren't updated at all.

4 MS. HOFF: Could we identify what table you're
5 talking about?

6 THE WITNESS: I'm sorry?

7 MS. HOFF: Could we identify what table you're
8 talking about? There's a number of tables.

9 THE WITNESS: Yeah, table nine -- table nine.

10 MS. HOFF: Table nine?

11 THE WITNESS: I'm sorry -- page nine -- I
12 apologize -- page nine and page -- page eight and page
13 nine, okay? From the 217 -- the 2017/18/19 through
14 2021/22 were misaligned in the original report, so
15 these are the corrected -- those are the corrected
16 figures. From 2017/18 down, it should be 117 million
17 dollars plus -- what I believe happened, by the way,
18 when I first got this data, the fiscal report said
19 2017. It didn't say 2017/18, so the dates were kind of
20 fuzzy. So, Arthur and I got that straightened out.

21 THE COURT: Referring to Mr. Lang?

22 THE WITNESS: I'm sorry?

23 THE COURT: Referring to Mr. Lang?

24 THE WITNESS: Yeah.

25 THE COURT: Okay.

1 THE WITNESS: Sorry.

2 THE COURT: That's okay.

3 All right. So, shall we --

4 BY MR. GROSSMAN:

5 Q So, your first table is an enrollment
6 comparison between public and non-public schools. Can
7 you tell us how you went about gathering the numbers
8 and what they represent?

9 A Yeah, these numbers come from the State Education
10 -- okay, I'm sorry. The first -- there are -- the
11 first column is the total number of school-aged
12 children that reside in Lakewood, 2011/12 through
13 2016/17, which was the last year I had the data. And
14 of those -- of those children, 5,229 attended the
15 public schools in 2011 and '12, which was about 20.9
16 percent of the total school-aged children in the
17 district, and in that year, 19,777 students attended
18 non-public schools, which represented about 79.09
19 percent. Going forward to 2016/17, you could see that
20 the total number of school-aged children in Lakewood
21 was 36,877, of which the public school children were
22 5,854, which was 15.87 percent of the total enrollment,
23 and the non-public -- total number of school-aged
24 children attending public schools was 15.87 percent,
25 and there were 31,023 school-aged children attending

1 non-public schools, representing about 84.13 percent.

2 The school totals, okay, come from the New Jersey
3 State Department of Education. They are -- for the
4 public, it's the ASSA numbers, which are the annual
5 report numbers.

6 Q What does ASSA stand for, if you remember?

7 A You know, I call it the "ASSA report." You know
8 what? I probably know. It's the -- it's the ASSA or
9 the state -- on the 15th of October each year, every
10 school district is required to report its enrollment.
11 Okay? The report is called ASSA. Off the top of my
12 head -- I've been saying it for so many years, I can't
13 even remember what the acronym is. And the non-public
14 numbers came from, also, New Jersey State Department of
15 Education on a private school reporting database that
16 they have, and I don't know what that's called.

17 Q Okay. Did you -- okay -- table two is an
18 enrollment comparison between public and non-public
19 schools, on page two.

20 A Well, that's projection.

21 Q Okay. How'd you go about -- did you do the
22 projection?

23 A Yes.

24 Q How did you go about doing that?

25 A This was based -- this was -- I used the Cohort

1 Survival Method of --

2 Q Right. Now, what's the Cohort -- what is a
3 Cohort Survival Method?

4 A The Cohort Survival Method is the state-prescribed
5 method of doing enrollment projections. For every
6 district that has to file an enrollment report in the
7 state, it has to be done through the Cohort Survival
8 Method. Now, what the Cohort Survival Method simply
9 is, it creates historical enrollment by following
10 groups of children as they move through the schools,
11 year to year. So, for example, if there are 100
12 students in year one in kindergarten and when they
13 become second grade students in year two, that number
14 is 110, that represents what's called a migration
15 ration of 1.1, or about a 10 percent growth rate.

16 Q May I interrupt you? When we're talking
17 about cohorts, we're not talking about growth cohorts
18 or any cohorts.

19 A We're talking about -- we're talking about --
20 right now, there's two. Right now, we're talking about
21 grade level cohorts. Kids in first grade become second
22 grade students and it's the same group of students.
23 They're the cohorts. Survival, I have no idea why they
24 use the word "survival," because it's not a life or
25 death situation; it's just growth from grade to grade

1 or a decline.

2 But anyway, let me finish. So, what happens is
3 that you take a six year history of enrollment as kids
4 -- as the same groups of students move from grade to
5 grade, and those are averaged out over that sixth year
6 to come off -- come up with what we call an Average
7 Migration Ratio. In other words, what's the average
8 percentage of students moving from one grade to the
9 next. That average is then used to the final year of
10 the projection -- I'm sorry -- to the final year of the
11 enrollment, and you multiply that number by the Average
12 Migration Ratio that you've averaged over the six-year
13 period, and that produces the projection over -- over
14 the five years or ten years -- however long you
15 projected. The most reliable is a five year
16 projection.

17 Now, kindergarten projections are done a little
18 bit differently. Kindergarten projections are done by
19 using live birth five years prior to the students
20 coming to kindergarten. So, for example, children born
21 in the year 2000 become kindergarten students in the
22 year 2012 (sic), so you do an average of those growth
23 rates for all the years you have birth rates -- all the
24 years that you have live birth data and that becomes
25 your projection for kindergarten.

1 The other parameter that you look at is the
2 potential of new housing coming in and you --

3 Q Before we continue, I think you said
4 kindergarten in 2012.

5 A I said children born in the year 2007 become
6 kindergarten students in the year 2012.

7 Q Okay.

8 A It's -- kindergarten is measured by births five
9 years prior to the children entering kindergarten.

10 Other parameters they use is looking at the number
11 of new residential or new approvals for new residential
12 housing in the district and you use certain factors --

13 Q What do you mean by "approval?"

14 A Planning board approval. So, in other words, if
15 you go to the planning board, you say, "What do you
16 have on the books? What type of units do you have?
17 What percentage of the number are affordable units?"
18 You get all that information. If you find a number of
19 approved new residential units, there are different
20 formulas applied to different types of units. For
21 example, single family homes may produce X number of
22 students. Multi-family homes, Y number. Townhouses, Z
23 number. And it varies from community to community and
24 income base to income base.

25 Q And now, according to your projections on

1 table two, it looks like a growth of roughly 5,000 --
2 yeah -- 5,000 children from school year 2017/2018 to
3 2021/2022.

4 Q For which? Public or non-public are you
5 looking at?

6 A Oh, I'm sorry. I'm looking -- I'm looking at --
7 well, I'm looking at -- well, I'm looking at both,
8 actually. They both seem to track. Is that about
9 right?

10 A Looks that way, yeah.

11 Q And the public school -- the public school
12 students include -- I'm sorry. Let me withdraw that
13 question.

14 Table three, you've got a public school enrollment
15 --

16 A What table are you looking at -- three?

17 Q Pardon? Yeah, three.

18 A Okay.

19 Q So, is this table a compilation of the prior
20 tables or does it have --

21 A I'm sorry. Are you -- are you looking at table
22 three?

23 Q Yes.

24 A Table three is strictly a projection of the
25 elementary schools -- of the public school students --

1 students attending the Lakewood Public Schools.

2 Q Okay. So, in 2021/22, you project an
3 increase in public school totals, and if I've got it,
4 of approximately 300 kids.

5 A No.

6 Q No? I'm looking at it wrong.

7 A I'm not sure what you're looking at.

8 Q I'm looking at --

9 A Okay, if I can -- okay -- the total K-12
10 population - not counting Pre-K, not counting special
11 ed -- was 5,273 as of 2016/17. That same population,
12 exclusive of special ed and Pre-K, is projected to be
13 5,984 in 2020/21. When you include Pre-K and special
14 ed in 2016/17, the number was 5,854 and the projection
15 is to 6,528. That would be the total number of
16 students in the Lakewood Public Schools.

17 THE COURT: And is that, Doctor, because you
18 take the cohort and the cohort keeps moving forward?
19 And then to get to --

20 THE WITNESS: Yeah. I don't know if you've
21 got the copy, but the way --

22 THE COURT: And then to get to kindergarten,
23 you just go back to the live births five years before.

24 THE WITNESS: Yeah. Just -- if you read it, a
25 lot of people make the mistake of adding -- of going

1 this way, looking at the grade to grade. It's not.
2 It's the diagonal. So, it would be this kindergarten
3 becomes this first grade; this first grade, in the next
4 year, becomes this second grade, and so forth. So it's
5 on the diagonal; it's not on the vertical.

6 THE COURT: It's the cohort that --

7 THE WITNESS: It's the cohort, yeah.

8 THE COURT: -- that's moving along.

9 THE WITNESS: I'm sorry?

10 THE COURT: Like the baby boomers moved along

11 --

12 THE WITNESS: Yeah.

13 THE COURT: -- and made a big bulge in the
14 system.

15 THE WITNESS: Yeah, exactly. So, Your Honor,
16 just so you can see, this kindergarten, in 2011/12, is
17 this first grade in 2012/13, is this second grade. And
18 that -- and the factor in the middle, that 592 to 326,
19 that drop is a .511, so that's -- you know, that's the
20 migration ratio.

21 BY MR. GROSSMAN:

22 Q On page five (out of microphone range). Oh,
23 I'm sorry; I skipped page four. Would you explain the
24 significance of page four?

25 A Yeah, page four is the projection for the non-

1 public schools. Again, same process.

2 Q And what -- how much of an increase do you
3 see over the next five years or did you see a --

4 A Okay. The total -- the total enrollment in the
5 non-public schools was 31,023 in 2016/17. My
6 projection was 37,278 in 2021/22, which is just about
7 6,000 kids.

8 Q Okay. And so, your projection, basically, of
9 the comparison between table three and table four --
10 and I am going to put words in your mouth --

11 A Table three and table four, I think.

12 MS. HOFF: Objection.

13 BY MR. GROSSMAN:

14 Q If you take a -- going back to table three
15 and table four, would it be fair to say that the
16 increase -- the increase in private school students --

17 A Non-public.

18 Q -- non-public school students will be equal
19 to the population of the entire public school
20 population? In other words, the addition -- the number
21 of kids added to non-public will be equal to the total
22 number of kids in public.

23 A Let me try -- okay -- do you mean if you take the
24 total number of public school kids and add them to the
25 total number of non-public school kids --

1 Q No.

2 A I'm truly not understanding the question.

3 THE COURT: Me either.

4 BY MR. GROSSMAN:

5 Q Well, there are going to be 6,000 kids added
6 to non-public schools.

7 A Correct.

8 Q And the total population of the public
9 schools will be 6,000.

10 A Oh, okay. Yeah, correct. Yes, so the increase in
11 the non-publics would be equal to the total population
12 of the public.

13 Q Total population --

14 A Got it.

15 Q -- just the increase.

16 A Got it. Got it.

17 Q Okay. So, going back to 2011, to your
18 projections for 2020 -- on page five -- on 2021 --

19 A You're talking about the chart?

20 Q Yeah, the chart.

21 THE COURT: We're on page five chart?

22 MR. GROSSMAN: Yeah, uh huh.

23 THE COURT: Okay, chart one.

24 BY MR. GROSSMAN:

25 Q Just to do the math, what's the -- what's the

1 -- what's the percentage change from 2011 to --
2 2011/2012 to 2021/22?

3 A For which -- which one?

4 Q I'm sorry -- for non-public.

5 A It's almost -- it's roughly -- it's roughly 50
6 percent.

7 Q And --

8 A I mean, it's 19,777 in 2011/12, and going with the
9 projections, it's 37,000, so it's roughly 50 percent.
10 I can take out my calculator and give you an exact if
11 you want.

12 THE COURT: No, that's all right. We've got
13 the approximation. So you're saying it's going to be a
14 50 percent increase in public school?

15 THE WITNESS: Non-public.

16 THE COURT: Non-public school students.

17 THE WITNESS: And the public school looks like
18 it's more like about 75 -- I'm sorry -- about 25
19 percent, roughly. I'm going to take out my calculator
20 and give you an exact.

21 BY MR. GROSSMAN:

22 Q Would you go back to page two?

23 A What?

24 Q Would you go back to page two?

25 A Two.

1 Q Page one and two.

2 A Okay.

3 Q In other words, the spread is getting larger.

4 A I think -- if I may?

5 Q Yes.

6 A Okay. If we go to the chart -- the chart, page

7 five, okay? Actually, I did this in living color.

8 Sorry you guys don't have it. But if you take a look,

9 the long bar represents non-public; the short bar

10 represents public. So, you can see visually on there,

11 the spread getting larger. If you take a look here, if

12 you take a look over here, you see the spread here, you

13 see that -- you see that the non-public -- the public

14 is, you know, it's rising.

15 THE COURT: But not at the same rate as --

16 THE WITNESS: But not at the same rate as the

17 -- as the non-public.

18 BY MR. GROSSMAN:

19 Q And you've indicated that you've done about

20 120 studies for school districts in New Jersey?

21 A No, more than 300.

22 Q More than 300. And how many school districts

23 are there in New Jersey?

24 A Six hundred thirty-five, I think. It's somewhere

25 over 600.

1 Q Are you aware of any other district in the
2 state that has that kind of a disparity --

3 A No.

4 Q -- between private and --

5 A No, I --

6 Q -- non-public and public schools?

7 A No, and in fact, I've worked in a number of states
8 and I've never seen anything like this. I've never
9 even seen anything close.

10 Q What states were you looking at?

11 A Oh, New York, Connecticut. Similar school
12 districts I worked in out of state were Lawrence and
13 Hewlitt, which have very large -- have very large
14 Orthodox populations that the kids only go to non-
15 public schools, but the spreads -- the public schools
16 still outnumber the non-publics in both of those school
17 districts, which again, would be Hewlitt and Lawrence.

18 Q Okay. So, now, if you turn to page six,
19 there's been an objection to your expertise as to
20 financial matters. You testified that you were
21 involved in transportation analyses for the school
22 districts.

23 A Right.

24 Q Okay. Where did -- this chart, on table
25 five, has a total that pertains to transportation.

1 Where did you get those numbers from?

2 A The school district -- the Lakewood School
3 District.

4 Q And there's a projection here of, in 2021/22,
5 to 38 million from 18 million in 2015/2016. How did
6 you -- how did you make your -- how did you make that
7 --

8 A Well, let me be very clear. This is an estimate
9 and it's an estimate based upon the notion that the
10 more -- if all things remain the same, in terms of
11 transportation eligibility -- you know, meaning what
12 qualifies children to take a school bus in a school
13 district -- all things being equal, the percentage --
14 roughly, the percentage increase in the enrollment
15 would be commensurate with the needs of transportation.
16 So, if the enrollment is going by X percent, I made an
17 assumption here that the transportation would increase
18 on a commensurate -- that it would go up that way.
19 It's not an exact science, but it gives the District an
20 idea or guideline of what it might be spending over the
21 next few years.

22 Q The first column in that chart is "adequacy."

23 A Okay.

24 Q How is that calculated?

25 A Well, it's a state formula and --

1 Q There's no magic.

2 A It's not -- no, the State comes up -- does --
3 comes up with a number of what the State believes it
4 would take to educate students for a particular
5 district. I believe what they do is, they come up with
6 the notion of what one student would cost as a
7 baseline. Okay? What one student would cost as a
8 baseline, okay, and then they add to it parameters for
9 different districts. So, for example, if a district is
10 very heavily free and reduced lunch, lower socio-
11 economic status, that would add a factor to that one
12 student cost. And then, I believe -- I believe then
13 the State calculates the difference between what the
14 State is going to provide to the school district and
15 what the district can raise. That difference, I
16 believe, is the equalization formula. I could be wrong
17 -- I said I'm not an expert on this -- but I believe
18 that's -- that's my understanding of the adequacy
19 budget. It's what the State determines it would cost
20 to adequately educate a child in the district, added to
21 that, the parameters of special needs or whatever it is
22 that the district has -- again, you know, such as free
23 and reduced lunch, lower socio-economic, children in
24 need -- all that kind of stuff -- and then they
25 determine what the district can aid, and that gap

1 determines the equalization formulas they will apply to
2 the school district.

3 So, just looking at chart, so, what it said, that
4 the State established that the adequacy budget to
5 educate students in Lakewood is 117 million, 325
6 thousand, 784 dollars.

7 Q So that's --

8 A A state-established number.

9 Q So it's a state-established number times --
10 per student -- per student, based on your -- by
11 determining --

12 A Well, no, that's what -- the total budget to
13 educate the total amount of students in that district.

14 Q Okay. What's -- you have another line here,
15 an entry line here for tuition.

16 A Okay.

17 Q What's that?

18 A Tuition is what the school district has to pay for
19 students not attending the public schools -- who are
20 public school students not attending the public
21 schools.

22 Q Meaning special needs children?

23 A Whatever -- yeah, special needs, yeah.

24 Q Okay. And how did you go about coming up
25 with those numbers?

1 A Given to me by the school district.

2 Q Okay. Now if you go to the next page, chart
3 two on page seven --

4 A Yeah.

5 Q You've got a history and projection of
6 tuition and transportation costs. What is that?

7 A Well, that's an estimate based upon the increased
8 population -- again, all things being equal, and
9 clearly, it's an estimate. All things being equal,
10 this is what the District might expect to have had to
11 pay for transportation and tuition over the next five
12 years or over the projected period, again, based upon
13 historical trends.

14 Q So, based on your demographic numbers --

15 A Yeah.

16 Q -- with state-mandated expense numbers, you
17 came up with these numbers.

18 A Yeah.

19 Q Is that fair?

20 A Yeah, it's fair.

21 Q Okay. So that wasn't something -- I'll
22 withdraw the question.

23 Let's go to page eight.

24 A Okay.

25 Q Table six.

1 A Okay.

2 Q And we have -- we have numbers from 2015/16
3 to 2021/22 (out of microphone range.) The -- well,
4 okay -- my question is, the adequacy tuition and
5 transportation numbers, I assume -- and correct me if
6 I'm wrong -- the numbers that were derived from the
7 charts we've already looked at.

8 A Is there a question?

9 Q Yeah. Is that correct? No, I just want to -
10 - you just carried over the numbers.

11 A Yeah, except there are two other columns here.

12 Q Yeah, I know. We're going to get there in a
13 second. I just want to -- so --

14 MS. HOFF: Objection. He's testifying for the
15 witness. It's very leading.

16 THE COURT: You are leading the witness.

17 MR. GROSSMAN: I'm sorry.

18 THE COURT: It's okay.

19 THE WITNESS: What was the --

20 MR. GROSSMAN: I just -- I just wanted to
21 clarify --

22 THE COURT: But I think that, in that context
23 --

24 MR. GROSSMAN: I just wanted to clarify that
25 --

1 THE COURT: Yes, in that context, it's not so
2 -- I could figure out that the numbers were carried
3 over.

4 MR. GROSSMAN: I just wanted to make sure that
5 I was looking at the right numbers.

6 BY MR. GROSSMAN:

7 Q Okay. You have two other columns here for
8 services with asterisks. Would you please explain --
9 without getting into the numbers, would you please
10 explain what that's --

11 A Yeah, when we looked -- when I looked at the
12 District budgets -- and again, all of this data came
13 from the District -- there was some -- there were two -
14 - there were two columns -- one was services, which
15 were clear. We found that those were things such as
16 OT, PT, which is occupational training and physical
17 therapy, and speech. And the -- and that was defined
18 "other services" -- I should have two stars, actually
19 -- was a column provided to me by the District. I
20 don't have any definition for that -- it was just in
21 the budget -- so I can't explain what it is.

22 Q But you made projections based on that.

23 A Again, assuming that the -- assuming that the
24 District was going to carry forward with those
25 services, yes.

1 MS. HOFF: Objection. If he doesn't know what
2 "other services" are or how those numbers are
3 calculated, he can't testify anything as to the
4 projections of those numbers.

5 THE COURT: I think he testified that he used
6 the numbers that he found on the website?

7 THE WITNESS: No, no. This was actually data
8 given to me by the school district.

9 MR. GROSSMAN: Your Honor, I have -- I believe
10 this has been turned over to me (out of microphone
11 range.) P-22, Your Honor -- I think you guys got a
12 copy.

13 MS. HOFF: Yes, we have a copy.

14 THE WITNESS: May I see?

15 THE COURT: Well, I don't have P-22.

16 MS. HOFF: Let me clarify our objection. It's
17 -- you know, we're disputing that he -- not how he
18 calculated these things, but that he doesn't know what
19 they are. He doesn't know the source that they're
20 derived from.

21 THE WITNESS: No, I have the source. This is
22 the source.

23 THE COURT: So, I guess the source comes from
24 something else that we're going to hear about -- other
25 services.

1 THE WITNESS: If I may, I --

2 THE COURT: It's minuscule in the whole
3 budget, actually.

4 Do you have a copy for me?

5 MR. GROSSMAN: I'm sorry. I thought (out of
6 microphone range.)

7 THE WITNESS: It looks like a category called
8 "miscellaneous."

9 MR. LANG: Your Honor, can I introduce this
10 also as exhibit five -- P-5 -- the budget?

11 THE COURT: Who's doing what here? Why don't
12 you give me, first, P-22.

13 MR. GROSSMAN: That's P-22. I'll write it on
14 there.

15 THE COURT: I'll write it on there. Not a
16 problem. Okay, P-22.

17 (P-22 Marked for
18 Identification)

19 You have that Department Financial Statement?

20 MS. HOFF: Yes.

21 THE COURT: Okay. Very good.

22 Okay, so this looks like a Special Services
23 Budget, is that right, from the District?

24 MR. GROSSMAN: Yes, Your Honor.

25 THE COURT: Well, assuming that this is an

1 accurate rendition of it. I'm sure you'll compare,
2 right?

3 BY MR. GROSSMAN:

4 Q Dr. Haber, can you tell us from where -- the
5 source from which you got P-22?

6 A Is this 22? The school district.

7 THE COURT: Where did you get it?

8 THE WITNESS: The school district -- Lakewood
9 Public Schools Business Office.

10 MS. HOFF: And I would just put an objection
11 on the record that there is, you know --

12 THE COURT: It's noted. It's noted.

13 MS. HOFF: Okay.

14 MR. LANG: I'm sorry. What is the objection?

15 MS. HOFF: That there is no way that he can
16 verify the accuracy of this document. He didn't create
17 it. It's just something that he received from the
18 school district.

19 MR. GROSSMAN: That's --

20 MR. LANG: (Out of microphone range)

21 MR. GROSSMAN: Your Honor, subject to -- we
22 expect to have, as Your Honor knows, school district
23 personnel testify.

24 THE COURT: I understand.

25 MR. GROSSMAN: So, subject to that.

1 Can I approach the bench?

2 THE COURT: Are they marked?

3 MR. GROSSMAN: Yes.

4 THE COURT: Okay. What do we have here?

5 MR. GROSSMAN: P-5, Your Honor.

6 MR. LANG: The budget.

7 THE COURT: Do you have P-5?

8 MS. HOFF: Let me look. P-2, P-3, P-4, P-5.

9 BY MR. GROSSMAN:

10 Q Would you please go to -- first of all, have
11 you seen this document before today?

12 A Which one -- which one are --

13 Q P -- exhibit five.

14 A Yeah, that's the User Friendly Budget.

15 (P-5 Marked for
16 Identification)

17 Q What's does that mean?

18 A It's the budget that's on the State website. When
19 you go to New Jersey Department of Education data, you
20 can access the User Friendly Budgets for any school
21 district. It's also on the District website, too.

22 Q Okay. And --

23 A But these -- this is all public information.

24 Q Would you go to page five of 33 and look at
25 the -- I don't know what line down it is. There's

1 support services; it's one, two, three, four, five --

2 A I see it.

3 Q Okay. Is that -- is that the same -- is that
4 consistent with the other --

5 A It's blank.

6 Q No, no. The one that says "Unexpended Other
7 Services."

8 A Oh, under "Support Services."

9 Q Yeah, that's right.

10 MS. HOFF: I'm sorry. I'm not clear on what
11 line that we're looking at right now.

12 THE COURT: Me either.

13 MR. GROSSMAN: (Out of microphone range)
14 there's a --

15 MS. HOFF: Well, you could just read the line.

16 MR. GROSSMAN: Okay. It says -- I'd like to
17 -- it says, "Undistributed Expenditure, Other Services,
18 Standard Extra Services -- Student Extra Services" and
19 it's 11000217XXX.

20 THE WITNESS: Yeah, that's where I got that
21 number. That's where the number comes from.

22 BY MR. GROSSMAN:

23 Q And that carries over to --

24 A Yeah, the report.

25 MS. HOFF: I'm sorry. What -- what -- that is

1 where -- what number?

2 MR. GROSSMAN: The number 2,516,926 dollars.

3 THE COURT: At the last column -- in the third
4 column -- "2017/18 Anticipated."

5 MR. GROSSMAN: Right. No, we don't want that
6 one.

7 THE COURT: It's one, two, three, four, five,
8 six, seven, eight, nine, ten --

9 MS. HOFF: Because he's reading -- the figure
10 he just read is from the line above the one that he
11 said that he was reading. He just read --

12 THE COURT: No, no.

13 MR. GROSSMAN: Wait a second.

14 MS. HOFF: -- here from "OT, PT, and Related
15 Services."

16 MR. GROSSMAN: If I did -- if I did (out of
17 microphone range.)

18 THE COURT: So, it's like the twelfth line up.

19 MS. HOFF: So it's line --

20 THE COURT: Speech, OT, PT, and Related
21 Services.

22 MR. GROSSMAN: (Out of microphone range)

23 MS. HOFF: So that's what he's reading. Okay.

24 THE WITNESS: It would be 217.

25 MR. LANG: Huh?

1 THE WITNESS: Two seventeen. Yeah, 217,
2 that's where -- that's where it is.

3 THE COURT: Where are you talking about 217?

4 THE WITNESS: No? Yes?

5 MR. LANG: If you look down the columns, that
6 gives you the year, and if you look at the

7 MS. HOFF: Wait, wait. What's going on here?

8 MR. LANG: We're trying to say what these
9 numbers are.

10 MS. HOFF: You are trying to.

11 THE COURT: No, you can't say what the numbers
12 are. Okay. So, I'm looking at where it says,
13 "Undistributed Expenditures."

14 MR. GROSSMAN: Yes.

15 THE COURT: "Speech, OT, PT, and Related
16 Services." Okay.

17 MR. GROSSMAN: And there's one underneath
18 that.

19 THE COURT: Well, this one is 3,723,890 --

20 MR. GROSSMAN: Correct.

21 THE COURT: -- which is picked up on table
22 six.

23 MR. GROSSMAN: Right.

24 THE COURT: Okay. And then -- but that
25 doesn't correlate to "Other Services."

1 MR. LANG: No, that's the next line.

2 MR. GROSSMAN: Correct, that's the next line.

3 MS. HOFF: And for clarification, are we

4 looking at the actual or the revised?

5 MR. LANG: The revised and anticipated.

6 MR. GROSSMAN: We're looking at the revised.

7 THE COURT: Then that's actually a mistake.

8 You can see that. One was for 2017/18 and one was

9 2016/17, one 17/18, and the number got picked up.

10 Right?

11 MR. GROSSMAN: Right.

12 THE COURT: Okay. All right, now I think

13 that's correct. So I see what you did. You just

14 picked up those two things.

15 MR. GROSSMAN: Right.

16 THE COURT: What about all the rest of the

17 items that are listed?

18 MR. GROSSMAN: Your Honor, there's a -- on the

19 -- I think this was --

20 MR. LANG: (Out of microphone range)

21 MR. GROSSMAN: On the Department -- on the

22 two-sheet Department financial statement, special

23 services, there's an item that says, "Extraordinary

24 Services."

25 MS. HOFF: Is there a question?

1 MR. GROSSMAN: No.

2 THE COURT: Yeah, I'm looking to see what
3 you're referring to.

4 MR. LANG: Your Honor, could I speak?

5 MR. GROSSMAN: Your Honor, I have no objection
6 to Mr. --

7 THE COURT: I know, but Mr. Grossman, you're
8 the one who's doing the presentation. What is it that
9 you're trying to show me?

10 MR. LANG: To explain what that number is.
11 The budget's not --

12 THE COURT: But that's not for you to explain.
13 That's for the witness to explain and if the witness
14 doesn't know it, he doesn't know it. That's all.

15 THE WITNESS: I have absolutely no idea what
16 I'm supposed to answer to the question right now.
17 Please ask again.

18 THE COURT: That's because there's no question
19 in front of you right now.

20 BY MR. GROSSMAN:

21 Q Is that --

22 A Okay. Are you asking me, under that, on chart
23 eight -- table eight -- I'm sorry -- table six, page
24 eight, under "Other Services," where I got that number
25 from?

1 THE COURT: Yes.

2 THE WITNESS: Is that the question?

3 THE COURT: I think that's the question.

4 THE WITNESS: I got it from the User Friendly
5 Budget, which would be account 11000217-XXX. Those
6 numbers match up with those columns.

7 MR. GROSSMAN: Okay. Thank you.

8 THE WITNESS: And five was my source document.

9 BY MR. GROSSMAN:

10 Q And they -- they -- do they correlate then to
11 "extraordinary services" on the --

12 A I believe so, yes.

13 Q -- P-23, I think it is.

14 THE COURT: P-23? I don't have P-23.

15 MR. GROSSMAN: Twenty --

16 THE WITNESS: Two.

17 MR. LANG: P-22, P-22.

18 MR. GROSSMAN: P-22 -- I'm sorry, Your Honor.

19 THE WITNESS: Yes.

20 THE COURT: P-22.

21 MS. HOFF: Where is "extraordinary services"
22 on P-22?

23 MR. LANG: Am I allowed to say?

24 THE COURT: We're looking for it.

25 MS. HOFF: Okay.

1 MR. GROSSMAN: It's -- see it under --

2 THE COURT: Under "Salary."

3 MR. GROSSMAN: On P-22, under "Salary," it
4 says "Extraordinary Services."

5 THE COURT: But that's just salaries.

6 MR. GROSSMAN: Yeah, that's just salaries.

7 And apparently -- and we'll establish whether the
8 District personnel -- what the other components are.

9 MS. HOFF: And objection. Is there a question
10 there?

11 MR. GROSSMAN: No.

12 THE COURT: I think he was answering my
13 question.

14 MR. GROSSMAN: I was responding to Judge
15 Scarola's --

16 MS. HOFF: Okay.

17 THE COURT: Where is said that's just salaries
18 and then we have "Related Services," and the related
19 services amount seem to correlate to what was put down
20 for "Anticipated Other Expenditures,"

21 MR. GROSSMAN: Correct.

22 THE COURT: -- except "Salary" gets repeated,
23 so we'll have to -- I guess somebody from the District
24 is going to have to testify.

25 MR. GROSSMAN: Somebody from the District will

1 explain that.

2 THE COURT: Okay.

3 BY MR. GROSSMAN:

4 Q But now -- okay, so your projections on table
5 six are based upon -- let me rephrase that because
6 that's leading and I'm sorry. Please explain to us how
7 you made projections for 2018/19 -- for the next three
8 years -- 2018/19, 2019/20, and 2021/22.

9 A The projections are based upon trends, what the
10 trends of -- what trends are being seen in the
11 enrollment, percentage of growth, percentage of growth
12 of programs -- are then applied to expenditures as an
13 estimate of what the future growth of what -- of what
14 those expenditures might be. Let me emphasize, they're
15 estimates based upon trends. There's no way for
16 anybody to really come up with an exact amount in the
17 future. I may be providing too much information, but
18 the bottom line is, the only way you can get to --
19 provide a board of education the information it needs
20 to do future planning is to do it based upon trends,
21 and that's what this is. So, whatever the percentage
22 increase of enrollment is, I will apply a weighted
23 number to other objects like expenditures.

24 Q Okay. And how did you -- what do you mean by
25 "weighted number?"

1 A Well, because -- the weighted number based upon --
2 based upon -- how can I say it? Let's say there are
3 six kids in the class -- six kids in the class. It's
4 not going to be an exact amount over the years, so I'll
5 do a percentage of those numbers. It's hard to
6 explain. It's a weighted average, saying, okay, each
7 year, you go up a certain percentage, okay, a certain
8 percentage, and you take a differential between the
9 percentages of student growth and expenditures to come
10 up with an estimate. But basically, the simplest way
11 to explain it is that whatever percentage growth I'm
12 seeing in student population, I apply to other
13 expenditures.

14 Q So, essentially, it's multiplication. Is
15 that --

16 A Well, I mean, in its simplest form. With the
17 population going up 10 percent, we assume the
18 expenditures will go up 10 percent. But -- oh, okay.

19 THE COURT: But aren't there certain --

20 THE WITNESS: But, I mean -- but --

21 MR. GROSSMAN: Excuse me. The Judge had --

22 THE COURT: Aren't there certain economies of
23 scale?

24 THE WITNESS: I was just going to -- I was
25 going to address that. So, for example, if you add 10

1 more kids, you're not going to add 10 more buses.
2 Okay? So, for example, so, if I look at transportation
3 and I say, listen, every kid that comes up, I'm going
4 to add the cost of a bus to that. I mean, the
5 percentage of the cost of a bus to that. So, for
6 every, let's say, 40 -- if you take a look at the
7 capacity of a bus in New Jersey for an elementary
8 school kid -- I'm using this as an example -- it's 54
9 capacity, so one kid isn't going to make up a bus, but
10 54 might.

11 BY MR. GROSSMAN:

12 Q Do you know how many -- did you -- sorry (out
13 of microphone range.) Were you able to make any kind
14 of determination as to how many children in Lakewood
15 receive free lunches?

16 A Well, it's free and reduced. Hang on. I actually
17 -- okay, this is -- I just pulled one of -- this is
18 from -- this is my -- this is my own notes.

19 MS. HOFF: Objection. I don't know what he's
20 looking at.

21 THE WITNESS: In 2000 --

22 THE COURT: Wait, wait, wait, wait.

23 THE WITNESS: I'm just -- he asked me a
24 question. I --

25 MS. HOFF: But he can't bring his --

1 THE COURT: But they get to object before you
2 get to answer.

3 THE WITNESS: I'm sorry.

4 BY MR. GROSSMAN:

5 Q Before -- before we get into the objection,
6 you have a piece of paper in front of you.

7 A Yes.

8 Q Would you just tell us what that is?

9 A Yeah, this is -- I just wanted to make sure my
10 percentages were right, so I went online to the State.
11 I took one -- I picked one year of student enrollment.
12 This is from -- this is from the New Jersey Department
13 of Education. It's -- it's just -- it's the ASSA
14 reports, okay, and they're -- again, you can get them
15 just by school district online. Okay?

16 Q Okay.

17 A So what I did is, I -- I was -- I wanted to know,
18 in terms of doing my report, what are the percentages,
19 so I wanted to bring that -- if I got asked this
20 question today, which apparently, I did, I wanted to be
21 able to come up with a percentage, at least to give an
22 idea of what the number is, so --

23 THE COURT: So let's put the notes away. You
24 have to testify from your report and if it's not in
25 your report and you don't know the answer, you just --

1 THE WITNESS: Well, no, it is in my report.

2 MR. GROSSMAN: Well --

3 THE COURT: Okay.

4 THE WITNESS: It is in my report.

5 BY MR. GROSSMAN:

6 Q Would you -- where is it in your report?

7 A In the -- I believe that's on page --

8 THE COURT: Page 12.

9 THE WITNESS: Okay. On page 12, second
10 paragraph, can I read it? It's the answer to the
11 question.

12 THE COURT: Just answer the question if you
13 know the answer. How many children in Lakewood receive
14 a free and reduced lunch?

15 THE WITNESS: I do know the answer. The
16 answer is 90 percent.

17 THE COURT: Okay.

18 MS. HOFF: And Your Honor, if I may, if you
19 have any notes up there that you brought with you, if
20 we can, like, remove those from the witness stand and
21 if you --

22 THE WITNESS: Well, I'm just trying to be
23 precise, I mean, with a precise number, but --

24 THE COURT: We understand, Doctor, but you
25 really just testify about your report. First, from

1 your own memory, and then if you don't remember, then
2 you get to refer to your report.

3 THE WITNESS: Oh, okay. I'm sorry. I didn't
4 --

5 THE COURT: It's okay.

6 MS. HOFF: So can we --

7 THE WITNESS: Can I answer the question?

8 MS. HOFF: Can we remove the notes from the
9 witness so he can't look at them?

10 THE COURT: Yes, the notes should be --

11 MR. GROSSMAN: Absolutely.

12 THE COURT: Put the notes down on the floor or
13 something.

14 THE WITNESS: I've covered it up.

15 THE COURT: That's fine. He can cover it up.

16 THE WITNESS: Here, folded in half,
17 everything. Okay.

18 MR. GROSSMAN: Now that was (out of microphone
19 range.) Okay.

20 THE WITNESS: Okay, you -- okay, I'm sorry.

21 BY MR. GROSSMAN:

22 Q Are you aware of any other districts in New
23 Jersey with that high of a percentage of students
24 getting free lunches?

25 A Ninety percent is pretty high. I can't answer

1 that question. There are some districts, maybe, like -
2 - no, I won't answer the question. This is very, very
3 high. I'm sure there are others. I can't give you a
4 precise answer on that.

5 Q You made a determination in table six. Will
6 you take a look at table six on page eight and tell us
7 what that is?

8 A Table six on page eight?

9 Q Yeah.

10 A That is the required cost above adequacy for
11 Lakewood students.

12 Q And table -- and we've gone through that. I
13 just want to, for purposes of continuity, go to table
14 seven.

15 A Well, it's the same thing but it includes -- it
16 includes aid. It includes state aid.

17 Q And what is -- okay. And if we go to table
18 eight?

19 A Table eight -- table eight is the actual budget,
20 the adequacy budget, the amount that's actually needed
21 by the State and then the differential between the two.
22 And that -- that number should be -- that number on
23 adequacy for 2017/18, that should be 117 million. Is
24 that what you have in your report?

25 Q No.

1 A Because when --

2 Q Which year? I'm sorry. Yes, yes, yes.

3 A Yes.

4 MS. HOFF: That's what was changed.

5 BY MR. GROSSMAN:

6 Q Okay. That was what changed. And why did
7 that change?

8 A It was just an error.

9 THE COURT: What was changed?

10 THE WITNESS: The adequacy, row two, in
11 2017/18 -- that number should be 117 million and all
12 the numbers below that should be 117 million.

13 THE COURT: Because it says 119, 120. All
14 that should say 117?

15 THE WITNESS: Yeah.

16 MS. HOFF: Yeah, he's looking at table eight,
17 column two, and that was what we discussed earlier.
18 That was one of the changes between the prior version
19 of the report and this one.

20 THE COURT: Well, this one is not changed.
21 This is all 119, 120 --

22 MS. PRAPAS: She must have version four
23 instead of version five.

24 MR. GROSSMAN: (Out of microphone range)

25 THE COURT: I must.

1 MS. PRAPAS: (Out of microphone range)

2 THE WITNESS: Your Honor, may I use a
3 calculator for a minute? May I use the calculator?

4 THE COURT: Yeah, you can use your calculator.
5 So it should say 117? Is that right -- 117?

6 MS. HOFF: Is there -- what is he calculating?
7 Is there a question pending?

8 THE COURT: I don't know. He can calculate
9 whatever -- he can calculate.

10 THE WITNESS: I'm -- my -- may I?

11 THE COURT: I'm just looking for the 117
12 number that is supposed to go here.

13 MR. GROSSMAN: (Out of microphone range)

14 THE COURT: 117, 325 -- okay -- 117,325,784.
15 Okay. That whole column is incorrect.

16 MR. GROSSMAN: I have (out of microphone
17 range.)

18 THE COURT: All right. Well, I'm using this
19 one because I have other comments on it.

20 BY MR. GROSSMAN:

21 Q What's -- how -- how did the disparity occur?

22 A Can you just bear with me a minute?

23 Q Sure.

24 A Okay. I'm sorry -- the question?

25 Q Why was there a change?

1 A I'm sorry?

2 Q Why was there a change?

3 A It was just copied incorrectly.

4 Q Okay. So, based -- based on your studies in
5 Lakewood, your analyses, you reached a conclusion.

6 A Yes.

7 Q What's the conclusion?

8 A Well, first of all, the obvious, that the
9 enrollment -- the enrollment in the non-public schools
10 -- in both public and non-public are growing. That,
11 over the next five years, there's going to be a
12 significant increase in the -- in the non-public
13 schools, requiring an increase in services. At the
14 same time, the population of the public schools is
15 growing. If we take a look at -- the State defines as
16 students on free and reduced lunch as students in need.
17 Those students -- those students in need -- those
18 students in need require more services than, I think,
19 that the budget will allow to happen, given -- given --
20 well, given the following. If you look at page 10,
21 okay, if you look at page 10, table eight --

22 MS. HOFF: And I'm going to have to object.

23 He's testifying what his conclusion is based on --

24 THE WITNESS: Well, based upon my conclusion

25 --

1 MS. HOFF: Let me finish my objection.

2 THE COURT: She has to -- she has to finish
3 her --

4 THE WITNESS: I'm sorry. I apologize.

5 MS. HOFF: He's testifying as to his
6 conclusions based on the tables in this report and he's
7 not been qualified as an expert in anything to do with,
8 you know, finances. He's only been qualified as a
9 demographer. Right now, his conclusion is leading into
10 finance.

11 MR. GROSSMAN: Your Honor, I think it's a
12 combination of both, because all we're really doing is
13 taking demographic data and applying it to state-
14 mandated numbers.

15 THE COURT: I'll permit him to give his
16 conclusions.

17 THE WITNESS: Okay. Yeah, because I think
18 it's important --

19 THE COURT: The way that it's going to (out of
20 microphone range) is going to depend on the evidence.

21 THE WITNESS: -- to understand the
22 significance of -- of -- of -- everyone agrees that
23 there's a relationship -- it is a known fact and
24 studies have proven -- the (out of microphone range)
25 study out of Columbia University and several others --

1 that there's a significant relationship between
2 finances and education. If you look at some of the
3 cases, going all the way back to Serrano vs. Priest,
4 Cao vs. Robinson, and all those cases, they all
5 establish the relationship between education and
6 finances. So, all I'm trying to do here is take a look
7 at what's going on in Lakewood and give -- and give an
8 example of why I reached my conclusion. If 90 percent
9 of the students in Lakewood are on free and reduced
10 lunch, and by definition, by State definition, are
11 children are in need of extra help -- students in need
12 -- 88 percent of the children in Lakewood are either
13 non-English or partial English speaking students who
14 are in need of extra services. The percentage of
15 special needs children in Lakewood are higher than
16 average in terms of the State.

17 So, having said that, there's a budget of
18 143,455,116 dollars, using 2017/18. Now, my
19 understanding, as part of that budget, is a percentage
20 of that budget, about five and a half million dollars,
21 is a loan from the State. Now, if we take a look at
22 what's needed, okay, in that district -- if we take a
23 look just at that number, okay, and we go back to my
24 tables on transportation and tuition -- which, just
25 again, for an example, if you take my transportation

1 and tuition totals for 2017/18 are almost 60 million
2 dollars. If the -- if the budget is 143 million
3 dollars and we're taking 60 million dollars of that
4 money out of the budget, that means that there's only
5 about 80 million dollars to adequately educate the
6 children of Lakewood, when adequacy says 117 million,
7 425, tells me that in terms of the relationship between
8 finances and education, that that budget cannot support
9 the children of Lakewood. Take into account also that
10 Lakewood is about 555th out of 564 school districts in
11 the state in per capital income. The ability for the
12 local district to raise that money, okay, is almost
13 non-existent. And furthermore -- or the end of that, I
14 think that when the SFRA was created, when it was
15 established that the public schools have to supply
16 transportation, special need textbooks, services, to
17 non-public school students -- to non-public school
18 students, especially those with special needs, I don't
19 think that the State never anticipated or the law ever
20 anticipated a disparity such as we're seeing in
21 Lakewood.

22 So, my conclusion is that, given the increase in
23 enrollment, given the increased needs of the students
24 in Lakewood, given the fact that 90 percent of the
25 children are defined as students in need, given the

1 fact that the non-public school is growing, and given
2 the fact that Lakewood, by law, must and should provide
3 non-public school students with the services that the
4 law defines them to have, I think that -- I don't think
5 that the District will have the ability to properly
6 educate those students over the next few years.

7 And let me add, you know, just one other thing.
8 I'm a demographer by definition. I'm an educator by
9 training. And when I go into school districts, I not
10 only go in to look at -- I don't only go in to do a
11 statistical analysis. I go in and take a look at
12 what's needed. I understand the educational needs of
13 kids. And clearly, they cannot be met in Lakewood.
14 That's my conclusion.

15 MR. GROSSMAN: I have no further questions,
16 Your Honor.

17 THE COURT: All right. Thank you. Shall we
18 do cross examination now?

19 MS. PRAPAS: Yes.

20 THE COURT: Okay.

21 CROSS EXAMINATION BY MS. PRAPAS:

22 Q So, Dr. Haber, you were retained by the
23 petitioners to provide an enrollment projection study.
24 Is that correct?

25 A That is correct.

1 Q All right. The exact wording on your report
2 on page one says you were "retained to provide an
3 enrollment study to analyze issues regarding funding
4 for Lakewood Public Schools." Is that correct?

5 A That's correct.

6 Q And you personally performed all of the
7 analyses in this report.

8 A Correct.

9 Q So you performed, personally, the portion
10 that concerns enrollment, from pages one to six of your
11 report?

12 A Correct.

13 Q And you personally performed all of the
14 analysis in the remainder of your report, from page
15 seven to page 12. Is that correct?

16 A Correct.

17 Q And no one assisted you in performing the
18 analysis on the report?

19 A Well, assistance -- assistance came from providing
20 documents and providing data to me, which came from the
21 District and from the State. So, from that point of
22 view, yes, I was assisted. In terms of my conclusions,
23 no.

24 Q Okay. But you testified numerous times that
25 you were not -- well, withdrawn. You testified that

1 you were not an expert in finance and that you're a
2 demographer. Is that correct?

3 A That is correct.

4 Q Okay.

5 A And I don't think in any place in this report I --

6 Q Okay. There's no question pending.

7 A Okay. I'm sorry.

8 THE COURT: Just wait until there's a
9 question.

10 THE WITNESS: I talk.

11 BY MS. PRAPAS:

12 Q So, on page one of your report, and you
13 testified that Lakewood has a unique circumstance by
14 having to provide services to a very large number of
15 non-public school students. Is that correct?

16 A That is correct.

17 Q And you go on in your report to say the law
18 mandates public school districts to provide services to
19 these students.

20 A That's correct.

21 Q Is that correct?

22 A That is correct.

23 Q And your reference to the law here is vague.
24 You don't identify what law you're referring to. Is
25 that correct?

1 A That is correct.

2 Q And you go on to state in your report, and
3 you also testified, that the law mandates provision of
4 textbooks, is that correct --

5 A That is correct.

6 Q -- to non-public students. Is that correct?

7 A That's correct.

8 Q But you don't mention in your report and you
9 didn't mention in your testimony today that the State
10 provides special textbook aid specifically for non-
11 public school students. Did you?

12 A No, I did not.

13 Q Okay. And I know that we're only looking at
14 the executive summary portion of your report right now,
15 but you didn't mention this anywhere else in your
16 report, that the State provides special aid for non-
17 public schools for textbooks. Is that correct?

18 A That is correct.

19 Q Okay. Also in your report, you state that
20 the law mandates provisions of transportation to and
21 from school. Is that correct?

22 A That is correct.

23 Q But you don't say in your report that the law
24 only mandates provision of these -- of transportation
25 to certain non-public students and not others. Is that

1 correct?

2 A I'm sorry. Could you repeat that?

3 Q You don't state in your report that the law
4 mandates provision of transportation services to only
5 certain non-public students but not all of them.

6 A That's a hard question to answer because there's
7 several answers to that question. I can't answer that
8 in a flat "Yes" or "No," because there are answers to
9 that question.

10 Q Let me rephrase. It isn't mentioned in your
11 report that the law mandates provision of
12 transportation services only to certain non-public
13 students but not all of them. You don't mention that
14 in your report. Is that right?

15 A The answer is no.

16 Q Okay. Thank you.

17 A But I have to qualify that.

18 Q Okay.

19 A But the answer is no, but there's a qualification
20 to that.

21 Q Okay. So, perhaps this will get to that.
22 So, in fact, some non-public students are not required
23 under the law to be transported to and from their
24 schools, correct? Not all --

25 A That's not correct. That's not correct, no. If

1 students are eligible for transportation in the
2 district, the District is required to provide
3 transportation to students who go to schools in
4 district.

5 Q Right. You said "if students are eligible."
6 What does that mean to you?

7 A Okay. In the State of New Jersey, students who
8 live -- who reside -- who are in grades K through
9 eight, who live two miles or greater from the school
10 they attend are eligible for free public -- free
11 transportation.

12 Q Okay.

13 A Students in grades nine through twelve who live
14 two and a half miles or greater from their schools are
15 eligible for transportation.

16 Q But the students that live less than that
17 distance from school -- their home and the school is
18 less than that distance that you just specified --

19 A Right.

20 Q -- you don't mention in your report that the
21 law does not mandate provision of transportation to
22 these students. Correct?

23 A That's correct.

24 Q Okay. And this is called courtesy bussing.
25 Is that correct?

1 A No, it's not. It's only courtesy bussing if the
2 board of education approves transportation for groups
3 of students who don't live -- who live less than --
4 it's called "less than remote." Any student that's
5 less than remote is not eligible for transportation,
6 theoretical, and transportation aid. If a board
7 provides courtesy and/or has a transportation, it's a
8 the board's discretion. It's not a state rule. The
9 State is very, very clear -- two miles, kids K through
10 eight; two and a half miles, kids nine through twelve.
11 And that is public and non-public students who reside
12 in the district.

13 Q All right. You also state in your report
14 that the law mandates special education programs and
15 services to non-public students. Is that correct?

16 A That is correct.

17 Q But you don't mention that the State provides
18 aid specifically for these non-public students in the
19 form of Chapter 192 and 193 aid.

20 A I do not mention that.

21 Q And you didn't mention that in your testimony
22 today, correct?

23 A I'm sorry. Repeat.

24 Q And you didn't mention that in your testimony
25 today.

1 A No, I did not.

2 Q And you didn't mention that districts are not
3 required to spend above their 192 and 193 aid.

4 provisions on these services for non-public students.

5 A I did not mention that, no.

6 Q Okay. If we could look at -- if we can turn
7 to petitioner's exhibit five, P-5, which is the user-
8 friendly budget.

9 A I'm sorry? Exhibit five?

10 Q P-5, the user-friendly budget.

11 A I got it.

12 Q 2017/18, on the bottom left.

13 A What page?

14 Q Page -- I believe it's six. Okay. And you
15 see the lines about two-thirds of the way down --

16 A I'm sorry. I didn't hear what page.

17 Q Page six.

18 A Page six. Okay, thank you.

19 Q So, about two-thirds of the way down, there's
20 "non-public auxiliary services" and "non-public
21 handicapped services."

22 A Yes.

23 MS. PRAPAS: Sorry, just give me a minute
24 here.

25 THE COURT: Of course.

1 BY MS. PRAPAS:

2 Q Okay. And so, looking at those non-public
3 auxiliary services and non-public handicapped services,
4 that totals about 16 million dollars, correct?

5 A Which area are you looking at? You're looking at
6 --

7 Q 2015/2016 actual.

8 A And you're starting -- okay, I just want to make
9 sure I'm looking at -- we're on the same page.

10 Starting with the top number --

11 THE COURT: Mr. Lang, Mr. Lang, your voice is
12 going to get picked up and it's going to be very
13 difficult for the transcription, so --

14 MR. LANG: I'm sorry.

15 THE WITNESS: Are you starting with the top?
16 May I ask, are you starting with the top number being
17 1,306,655 dollars, going back down to what number? I
18 -- I don't know how you're deriving the 60 million
19 dollars. Are you taking -- taking the column down from
20 where --

21 BY MS. PRAPAS:

22 Q I'm adding non-public auxiliary services --

23 A Okay, that's the 10 million -- 10.4.

24 Q Right. And non-public handicapped services.

25 A Okay.

1 Q Those -- and then, going down the vertical
2 column of 2015/16 actual. So, the rows are non-public
3 auxiliary, non-public handicapped, and the column is
4 2015/16 actual.

5 A I'm -- I'm not being difficult. I'm really not
6 following you. Maybe someone could just point -- I'm
7 really not following you.

8 MR. LANG: Your Honor, could I object even
9 though Dan is doing the examination?

10 THE COURT: It's not your turn yet.

11 MR. LANG: I'm going to object, I meant.

12 THE COURT: Mr. Grossman is the one who is
13 examining this witness.

14 THE WITNESS: Just show me what you -- I'm
15 just going to -- show me what you're talking about.
16 Starting where?

17 BY MS. HOFF:

18 Q Non-public handicapped services, five
19 million.

20 A Right, this one. Okay, that one.

21 Q And this one above it.

22 A That one above it -- okay.

23 Q Yes, under 2015/16. So those two numbers
24 equal 16 million?

25 A Oh, I'm sorry. I thought you said 60 million.

1 You said 16.

2 Q Sixteen, yes.

3 A I'm sorry.

4 Q So, you didn't mention in your report that
5 Lakewood got over 16 million dollars in auxiliary aid
6 for non-public students for 2015/16. Is that correct?

7 A Ask me again. I'm sorry. I did not mention --

8 Q You did not mention in your report or you
9 didn't mention it in your testimony today that Lakewood
10 received over 16 million dollars in auxiliary services
11 for non-public students in 2015/2016.

12 A Hang on a second.

13 MR. GROSSMAN: I'm sorry. Where are we
14 looking?

15 MS. PRAPAS: We are looking on page six of the
16 user-friendly budget 2017/18.

17 MR. GROSSMAN: Right.

18 MS. PRAPAS: And on the horizontal axis, lines
19 "non-public auxiliary services" plus "non-public
20 handicapped services" and under the column "2015/16,
21 actual."

22 BY MS. PRAPAS:

23 Q And the question is, you did not mention in
24 your report or in your testimony today that Lakewood
25 received over 16 million dollars in 192 and 193 aid.

1 A No, I did not.

2 Q Okay. And it is your understanding that 192
3 and 193 aid is the same thing as non-public auxiliary
4 services and non-public handicapped services. Is that
5 correct?

6 A Ask me the question again.

7 Q Is it your understanding that 193 and 193 aid
8 are the same things as non-public auxiliary services
9 and non-public handicapped services, that those are the
10 same things?

11 A I don't know. I can't answer that.

12 Q And I know that we're only at your executive
13 summary, but you don't mention Chapter 192 or Chapter
14 193 funding anywhere in your report --

15 THE COURT: Mr. Lang, you must control
16 yourself. You must.

17 BY MS. PRAPAS:

18 Q -- despite asserting having to provide
19 special education services to non-public students. Is
20 that correct?

21 A Correct.

22 Q And you don't mention anywhere in your report
23 and you didn't mention in your testimony today that the
24 District gets 192 and 193 aid from the State for non-
25 public students every year.

1 A I did not mention that in my report.

2 Q And isn't it also true that Lakewood's non-
3 public students received Title One aid from the federal
4 government?

5 A That is correct.

6 THE COURT: And what is Title One?

7 THE WITNESS: But I don't believe -- (out of
8 microphone range.) That is correct. Leave it at that.

9 BY MS. PRAPAS:

10 Q And you understand that Title One aid is
11 special aid provided by the federal government for
12 economically disadvantaged students?

13 A Yes.

14 Q And you don't mention in your report that the
15 federal government also provides IDEA funds for these
16 non-public students in Lakewood and you didn't mention
17 that in your testimony today.

18 A I'm sorry?

19 Q And you didn't mention in your testimony
20 today that the federal government provides IDEA funds
21 to these non-public students in Lakewood every year.

22 A No.

23 Q Is that correct?

24 And isn't it true that the State provides
25 these non-public students in Lakewood with other non-

1 public aid in the form of nursing aid?

2 A In the form of what?

3 Q Nursing aid.

4 A No, I don't know.

5 Q Okay. And isn't it true that the State
6 provides these non-public students with other aid in
7 the form of home instruction aid?

8 A I'm going to say that it's not in my report but a
9 number of these things you mention are -- are
10 incorporated into -- there's -- into -- into -- on
11 chart -- on table seven, chart nine. Now --

12 Q Table seven, chart nine?

13 A I'm sorry. Table -- table seven, page nine --
14 that we've added some additional aid.

15 Q Table seven, columns eight and nine.

16 A Yeah.

17 Q Is that what you're talking about?

18 A Yes.

19 Q "Extra aid" and "Total aid?"

20 A Yes.

21 Q Okay.

22 A And those two columns are fairly close to the 16
23 thousand -- the 16 thousand you talked about.

24 UNIDENTIFIED MALE: Sixteen million.

25 THE WITNESS: I'm sorry. Sixteen million.

1 BY MS. PRAPAS:

2 Q Okay. But column eight on table seven,
3 that's -- you have "extra aid" written there. By that,
4 do you mean extraordinary aid?

5 A I believe so, yes.

6 Q And extraordinary is -- extraordinary aid is
7 aid provided to public students, not non-public
8 students, correct?

9 A Correct.

10 Q But we were just talking about non-public
11 students and the various funds that the state and
12 federal government provides to non-public students,
13 correct?

14 A Right.

15 Q So that's not incorporating column eight.
16 Okay.

17 A I mean, I hedge my answer on that. Okay? I'm
18 going to hedge my answer on that. I'd say yes, you're
19 right.

20 Q Okay. And isn't it true that the State
21 provides these non-public students with other aid in
22 the form of technology aid?

23 A I believe -- I believe that's -- I don't know the
24 answer to that. I thought that the technology aid was
25 -- was from -- was Title One.

1 Q If you don't know the answer, you --

2 A The answer -- I don't know the answer.

3 Q Okay. And isn't it true that the State --
4 and we're talking about the State here, not federal
5 aid.

6 A Right, okay.

7 Q The State provides non-public students with
8 other aid in the form of security aid.

9 A In the form of --

10 Q Security aid.

11 A I don't know.

12 Q And because you don't know, that's why you
13 don't mention any of that in your report?

14 A Correct.

15 Q And so, you didn't consider any of that in
16 reaching your conclusions. Is that correct?

17 A That's -- that's fair.

18 Q Okay. Let's look at table one.

19 A I'm sorry?

20 Q If we could turn to table one in your report.

21 A Okay, yeah.

22 Q Okay. So, table one is supposed to represent
23 the historical enrollment of both public and non-public
24 students in Lakewood between 2011 and 2017, correct?

25 A Correct.

1 Q And then you used that to predict future
2 enrollment in the district in the next table, table
3 two.

4 A Correct.

5 Q And where you say "actual" in the heading of
6 that table, by that, do you mean actual enrollment?

7 A What are you looking at?

8 Q Table one, at the heading of table one, it
9 says "actual" in parenthesis at the end. By the word
10 "actual" there, do you mean actual --

11 A Well, what I meant, that was historic -- that's a
12 historical enrollment. That's the real enrollment, as
13 differentiated from projected enrollment.

14 Q Okay. You don't cite any sources for any of
15 the data in table one anywhere in your report. You
16 don't cite your sources. Is that correct?

17 A That is correct. They should have been cited.
18 They do come from New Jersey State Department of
19 Education and they do come from the school district.

20 Q Okay. You identified two sources just now
21 for one table. Can you clarify what source you relied
22 on for table one?

23 A Yes, I -- on table one, I relied on --

24 Q As between the --

25 A -- the ASSA report -- the New Jersey -- from the

1 New Jersey Department of Education.

2 Q Okay. In making any type of projection, if
3 the underlying data is not reliable, then the
4 projections will not be reliable, correct?

5 A That's correct.

6 Q And later in your report, you build upon the
7 enrollment projections that you have in table two, on
8 page two of your report --

9 A Correct.

10 Q -- to project the district's anticipated
11 budget, which you go on and do in tables five and six.
12 Is that correct?

13 A Correct.

14 Q And then later, you build upon these
15 enrollment projections in table two of your report to
16 predict how much state aid will be awarded to Lakewood
17 in future tables -- in the future --

18 A Correct.

19 Q -- in tables seven and eight. Is that
20 correct?

21 A That's correct.

22 Q But as you testified, you are not an expert
23 in the field of finance, to verbalize your answer --

24 A Correct.

25 Q -- and you are not an expert in state aid.

1 A That's correct.

2 Q Okay. Okay, so, looking at table one, the
3 public school numbers, you testified that you relied on
4 the ASSA. Is that correct?

5 A Right, correct.

6 MS. PRAPAS: I'm going to approach with the
7 ASSA from 2012/2013.

8 Did you guys want to see this? We've
9 provided this to you. And I'm going to go through R-11
10 through R-16 with him.

11 THE COURT: Is there a book for me?

12 MR. GROSSMAN: Your Honor, may we have a five
13 minute break?

14 THE COURT: Sure. If you need a break, go
15 ahead.

16 Do you need a break, Doctor, too?

17 THE WITNESS: Do I, too?

18 THE COURT: You cannot discuss your testimony
19 with anyone -- anyone.

20 (BRIEF RECESS)

21 THE COURT: So, we're back on the record. The
22 consensus is to call it a day right now. We'll be back
23 on Wednesday with testimony from school personnel. And
24 Dr. Haber, you've said that you'll be able to be here
25 on --

1 THE WITNESS: Monday.

2 THE COURT: Monday.

3 THE WITNESS: Monday.

4 THE COURT: Nine o'clock.

5 THE WITNESS: Perfect.

6 THE COURT: Unless you are advised otherwise.

7 In the meantime -- I have to put this on the record --

8 you cannot discuss your testimony with anyone, not

9 even, like, if they ask, "How'd you do? How did I do?

10 Was I okay?" You can't do that.

11 THE WITNESS: Got it.

12 THE COURT: You must keep your own counsel

13 (out of microphone range) done.

14 THE WITNESS: Okay.

15 THE COURT: All right? Thank you.

16 MR. STARK: And, Your Honor, if I may, that

17 includes counsel as well.

18 THE COURT: Of course. You can't talk to the

19 lawyers, even if they try.

20 MS. PRAPAS: And the lawyers can't talk to

21 you.

22 THE COURT: And the lawyers can't --

23 THE WITNESS: But I can talk to them about

24 something other than this issue.

25 MS. HOFF: Yeah, you can talk about the

1 Superbowl or anything like --

2 MR. GROSSMAN: We'll copy to you when we set
3 the --

4 THE COURT: Nothing --

5 THE WITNESS: Nothing about the case.

6 THE COURT: Nothing about the case.

7 MS. HOFF: Oh, time to come, procedural
8 issues, are fine.

9 THE COURT: Yes, of course, but that's it.

10 THE WITNESS: I get it. I get it.

11 THE COURT: Okay. Thank you.

12 All right. So we can go off the record.

13 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF MERCER }

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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, et
8 al. vs. David Hespe, et al., bearing Docket No. EDU
9 11069-14, heard on February 5, 2018 before the Office
10 of Administrative Law Court.
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