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Via electronic mail and fax

Honorable John S. Kennedy, ALJ  
Office of Administrative Law  
Quakerbridge Plaza, Building 9  
Mercerville, NJ 08625-0049

Re: Alcantara et al. v. Hespe, Commissioner of Education, et al.  
OAL Docket No.: EDU 11069-2014 S  
Agency Ref. No.: 156-6/14

Dear Judge Kennedy:

I am seeking leave to participate personally in this matter as amicus curiae. Enclosed for filing is a Notice of Motion. I have served the attorneys for the parties by electronic mail and fax.

I would have appended a legal brief, but the aftermath of oral surgery last week has made that impossible. Instead, I will promptly submit a brief should I be granted leave to participate.

With your leave, I will use this letter to explain briefly my interest in this case and why I believe my participation would be in the public interest and should be granted.

Education law and policy has been at the center of my professional activities for almost a half century. Virtually since I joined the faculty of Rutgers Law School-Newark in 1970, I have been involved in New Jersey's school funding and education reform litigation via *Robinson v. Cahill* and *Abbott v. Burke*. In 1973, I founded, and for three years directed, the Education Law Center in Newark, the attorney for the Abbott plaintiffs since the case's inception. I had the opportunity to argue before the New Jersey Supreme Court 14 times in *Robinson* and *Abbott* and have otherwise been heavily involved in the litigation. As you probably are well aware, ALJ Steven Lefelt had a major involvement in *Abbott*.

I also served as special co-counsel to the Englewood Board of Education in the case of the *Boards of Education of Englewood v. Englewood Cliffs v. Tenaflly*. That representation was between 1985 and 2002, and also involved a major role by ALJ Kenneth Springer.

In 2000, I established and continue to direct the Institute on Education Law and Policy at Rutgers-Newark. The Institute has done objective—and I believe high quality--applied

research on many issues deeply affecting education in New Jersey and in the U.S., including school funding, school governance, school segregation, school choice, educational accountability, effective education data collection, shared services and unusually successful schools in educating at-risk students.

Also at Rutgers, I have taught courses and seminars in education law and policy every year, up to and including the current one.

I seek to participate in the *Alcantara* case as amicus curiae because it is a very complex case, which raises important questions about the operation of New Jersey's school funding and educational governance systems. I believe that my long experience and acknowledged expertise in education law and policy can assist in the administrative adjudication of this matter.

The Lakewood school district and broader community are undoubtedly unique in New Jersey, if not the nation, in a number of ways and that uniqueness must play a major role in the adjudication of this case. But the decision in this case has to be made in the context of broader considerations of state-local shared funding of education and the extensive and well-established power and duty of the Commissioner of Education to do whatever is necessary to assure that all of New Jersey's students receive a constitutionally sufficient education.

I agree with the plaintiffs/petitioners that the state system does not meaningfully and adequately address Lakewood's unique circumstances. The state Department of Education has effectively acknowledged that by eliminating Lakewood's District Factor Grouping classification for the stated reason that more than 50% of its students in nonpublic schools. It is the only district in that status. Indeed, the percentage of nonpublic school students in Lakewood exceeds 80%, vastly greater than any other district. This has a tremendous distorting effect on Lakewood's status for purposes of state aid and the adequacy budget which is at the center of the state's school funding law, and in many other ways.

I also agree with the plaintiffs that the reasons advanced by the state defendants for dismissing this action are insufficient. As to the failure to join the Lakewood board of education, I would only note that local districts and their boards were not party to either the *Robinson* or *Abbott* cases although a major argument of the state in those cases, and especially in *Abbott*, was that any educational insufficiency was not caused by a lack of funding but by wasteful and ineffective district administration.

As to the argument that, in effect, the defendants lack power to remedy any deficiencies claimed by the plaintiffs, the New Jersey Supreme Court basically laid that argument to rest about 34 years ago. In *Jenkins v. Morris Township Board of Education*, the court reminded the Commissioner of Education that he had all the power necessary to assure that students received a constitutionally sufficient education, whether or not it was statutorily specified. In that case, the power in question was to order the regionalization

of school districts to effectuate the constitutional commands of “thorough and efficient” education and of racial balance.

Needless to say, the views expressed in this letter and the further views I will express if I am, granted leave to participate in this matter as amicus curiae will be my views and not those of Rutgers Law School or Rutgers University.

Thank you for considering my request. I hope to have the opportunity to assist the tribunal in dealing with this complex and important matter.

Respectfully submitted,

Paul L. Tractenberg