

# Arthur H. Lang

Attorney at Law

918 East Kennedy Blvd. • Lakewood, New Jersey 08701 • Phone: 732-609-5530  
E-Mail: lakewoodlaw@gmail.com NJ Att. No. 014102012



July 26, 2018

Honorable Susan M. Scarola, ALJ  
Office of Administrative Law  
Quakerbridge Plaza, Building 9  
Mercerville, NJ 08625-0049

**Re: Leonor Alcantara et. al., v. David Hespe et. al.**

OAL Docket No: EDU 11069-2014 S

Agency Ref. No. 156-6/14

Dear Judge Scarola,

As you may be aware, P.L.2018, c.67 became law on July 24, 2018 modifying the SFRA. The Petition is not moot as the new law eliminates all adjustment aid and will reduce or eliminate all future equalization aid to Lakewood without an accompanying increase in the budgeted local tax levy.<sup>1</sup> Petitioners respectfully move to supplement the record due to this change in events.

The core of the 2014 Petition challenges the SFRA as applied to Lakewood.<sup>2</sup> The recent change in law is

---

<sup>1</sup> Equalization aid is reduced from \$15 million in 2017 to no more than \$2 million in 2022. On the other hand, the *mandated* 102% increase in the local share under the new law, in the case of Lakewood, will not increase funding because the former *discretionary* 2% maximum increase in the local share under the former law was ordered by the state monitors each year since we filed this Petition.

<sup>2</sup> Judge Solomon Metzger, the author of the Bacon decision that indirectly led to the passage of the SFRA, wrote in Alcantara, "This matter arises out of a complaint filed before the Commissioner of Education alleging that the School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to- 63, as applied to the Lakewood

# Arthur H. Lang

Attorney at Law



918 East Kennedy Blvd. • Lakewood, New Jersey 08701 • Phone: 732-609-5530  
E-Mail: lakewoodlaw@gmail.com NJ Att. No. 014102012

substantially material to Petitioners' challenge to the constitutionality of the SFRA. The record must determine whether the statute is constitutional.<sup>3</sup> The loans against future state aid do not answer this challenge; such loans should not have to be relied upon and buttress Petitioners' challenge by attempting to remedy the insufficiency of funding under the statute. What is the difference between an interim administrative remedy subsequent to a finding of the unconstitutionality of the statute as applied to Lakewood and a discretionary remedy

---

School District violates the 'thorough & efficient' clause of the New Jersey Constitution." Order Denying Summary Decision at 2, July 19, 2016. In Count I and subsequent counts we petitioned the Commissioner to recommend that the legislature provide for an adjustment to the SFRA. . . because the SFRA as applied to Lakewood is currently unconstitutional." Amended Petition at 9, July 7, 2014. The constitutionality of the statute, not the effect of unpredictable administrative remedies on T & E, is the heart of the matter. In Abbott III, the Supreme Court ruled that the QEA funding statute was unconstitutional as applied since it "depends fundamentally on the *discretionary action* of the executive and legislative branches. . . ." Abbott by Abbott v. Burke (Abbott III), 136 N.J. 444, 451 (1994, emphasis added). Reason and precedent require a finding that the funding statute does not provide T & E as applied despite ad hoc discretionary remedies.

<sup>3</sup> Respondents admit the unconstitutionality of the SFRA and consequential necessity for administrative relief. "[T]he Department has provided financial assistance to Lakewood through state aid advances for the past three years in order to ensure that the District could provide T&E to its students." Brief in Support of Motion to Dismiss (April 30, 2018) at 55-56.

# Arthur H. Lang

Attorney at Law



918 East Kennedy Blvd. • Lakewood, New Jersey 08701 • Phone: 732-609-5530  
E-Mail: lakewoodlaw@gmail.com NJ Att. No. 014102012

before such a finding? Either way, a remedy is necessitated proving beyond a shadow of a doubt that statute does not provide for T & E as applied to Lakewood.

Petitioners presented testimony that the Lakewood 2018 deficit was \$17 to \$23 million and subsequently moved for emergency relief. This motion became moot after Respondents granted the district a \$28 million loan against future state aid.<sup>4</sup> The deficit is likely to increase for 2019 because Mr. Shafter, the state monitor, testified that 1) the nonpublic population increases "ten percent" a year (T5 39-5) and 2) a previous year's loan against future state aid "right off the bat" is the starting point for the deficit in the following year (T5 48-10 to 20). Mr. Finger, the business administrator, testified that the 2017 transportation and special education cost was "77, 78 million dollars" (T2 183-19) and the 2018 cost is "88 million dollars" (T2 189-17). Clearly expenses are increasing corresponding with the increase in the nonpublic population and the gap between

---

<sup>4</sup> The record currently does not account for this significant increase in the 2018 deficit requiring \$28 million or the fact that SFRA aid for 2018-19 was reduced after May 7, 2018 through State budget language.

# Arthur H. Lang

Attorney at Law



918 East Kennedy Blvd. • Lakewood, New Jersey 08701 • Phone: 732-609-5530  
E-Mail: lakewoodlaw@gmail.com NJ Att. No. 014102012

what the law determines as adequate for T & E in Lakewood and what the law allocates significantly widens under the new statute. Moreover, the new law essentially increases **future state aid for other schools districts** perhaps further hindering the state's ability to allocate the additional money for the district outside of the SFRA, which will be needed as an administrative remedy. In addition any loans would need to be made against declining amounts of equalization aid to Lakewood.<sup>5</sup> Also the question of whether or not the district has the ability to repay more and more loans needs to be considered.

For the foregoing reasons, Petitioners respectfully request the Court to allow them to reopen their case to supplement the record regarding the new law and its effect on Lakewood.<sup>6</sup>

---

<sup>5</sup> Perhaps Respondents' authority to loan against future state aid will also be questioned because the substantially reduced state aid to Lakewood over the next decade is not enough to be "repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years. . . not exceed[ing] 10 years. . . ." N.J.S.A. 18A § 7A-56.

<sup>6</sup> Petitioners wish to call Mr. Melvyn Wyns, formerly of the DOE Bureau of School Finance, to testify about the new law as applied to Lakewood. Mr. Wyns was unavailable last February to testify about the former law as applied to Lakewood due to a conflict of interest that has since been removed.

# Arthur H. Lang

Attorney at Law



918 East Kennedy Blvd. • Lakewood, New Jersey 08701 • Phone: 732-609-5530  
E-Mail: lakewoodlaw@gmail.com NJ Att. No. 014102012

Respectfully Submitted,

/s/ Arthur H. Lang

Arthur H. Lang,  
Attorney at Law

Cc: Geoffrey Stark, Esq. (via email)  
Jennifer Hoff, Esq. (via email)  
Lori Prapas, Esq. (via email)  
Lauren Jensen, Esq. (via email)  
Paul L. Tractenberg, Esq. (via email)  
Daniel Grossman, Esq. (via email)  
Michael Inzelbuch, Esq. (via email)