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LEONOR ALCANTARA, individually and as )  
Guardian ad Litem for E.A.; LESLIE )  
JOHNSON, individually and as Guardian )  
ad Litem for D.J.; JUANA PEREZ, )  
individually and as Guardian ad Litem )  
for Y.P.; TATIANA ESCOBAR )  
individually; and IRA SCHULMAN, )  
individually and as Guardian ad Litem ) OAL DOCKET No:  
for A.S. ) EDU 11069-2014S  
Petitioners, )  
v. ) Agency Ref. No.:  
) 156-6/14  
DAVID HESPE, COMMISSIONER OF THE NEW )  
JERSEY DEPARTMENT OF EDUCATION; the )  
NEW JERSEY STATE BOARD OF EDUCATION; )  
and the NEW JERSEY DEPARTMENT OF )  
EDUCATION )  
Respondents. )  
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BRIEF IN SUPPORT OF MOTION FOR EMERGENCY RELIEF

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APPLICABLE RULES

N.J.A.C. 1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the

agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;
2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;
3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;
4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and
5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall

file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

#### N.J.A.C. 6A:3-1.6 Emergent relief or stay

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief, or a stay of that action pending the Commissioner's final decision in the contested case.

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(c) Any party opposing such motion shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6A:3-1.5. However, upon review, the Commissioner may:

1. Act upon such motion prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard;
2. Act upon such motion upon receipt of the answer; or
3. Transmit the motion to the OAL for immediate hearing on the motion.

(d) The Commissioner may decide a motion for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

#### N.J.A.C. 6A:13-3.1 Class size in high poverty districts

(a) A high poverty school district as used in this chapter means a district in which 40 percent or more of the students are "at-risk" as defined in P.L. 2007, c. 260. 7

(b) Class size in school districts in which 40 percent or more of the students are "at-risk" as defined in P.L. 2007, c. 260 shall not exceed 21 students in grades kindergarten through three, 23 in grades four and five and 24 students in grades six through 12; provided that if the district chooses to maintain lower class sizes in grades kindergarten through three, class sizes in grades four and five may equal but not exceed 25. Exceptions to these class sizes are permitted for some physical education and performing arts classes, where appropriate. School districts previously subject to N.J.A.C. 6A:10A and 6A:10 shall implement the class size requirements set forth in this section during the 2008-2009 school year and all other school districts to which this section applies shall plan to implement the class size requirements beginning in the 2009-2010 school year and implement in the 2010-2011 school year.

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PRELIMINARY STATEMENT

Lakewood is currently preparing its 2018-19 budget, its fifth while under the jurisdiction of the state monitors reporting to the Department of Education Division of Finance and the fifth since Petitioners filed Alcantara. The 2018-19 budgetary year is the fourth consecutive to show a deficit. Lakewood's revenue problem has increased each year. The projected deficit is \$17 to \$23 million, just enough to maintain Lakewood's bare-bone program and curriculum. Years of programmatic cuts and state aid advancements have only added insult to the injury of the students. They again face the loss of an undetermined number teachers and larger class sizes.

The reason for the annual budgetary deficits is the arbitrary and capricious method of determining the Lakewood adequacy budget. Lakewood serves a base population of 37,000 children of which 22,240 are mandated transportation, and 7,186 are disabled. These 7,186 disabled children residing in Lakewood are a number greater than the entire enrollment of the district. All of them are eligible for a Free and Appropriate Public Education (FAPE) to receive special education services.

The cost in the 2018-19 of special education services for children opting for FAPE and for mandated transportation serving the 22,240 K-12 children eligible is projected as

\$88,798,184. This expense is for a district in which adequacy as defined is \$117,325,784 (adequacy budget plus categorical special education and security aid). Clearly there is no rational relationship between what the state considers adequate and the cost of T & E in Lakewood. The expense of mandated special education services and transportation serving a population of 37,000 after deducting full formula state aid is \$63,265,124 This comes out of the T & E budget. Lakewood is underfunded by about 40%. **The SFRA, as applied to Lakewood, is unconstitutional.**

Petitioners respectfully request emergency relief pursuant to N.J.A.C. 1:1-12.6, that the Department of Education immediately announce that the 2018-19 projected deficit will be covered in order to prevent the irreparable harm to students losing their teachers to other districts.

Petitioners also respectfully request that the Commissioner fully fund SFRA transportation aid to minimize the loss of T & E due to the cost of mandated transportation.

However, covering the deficit this year and full transportation aid is not a permanent solution. It will only prevent further attrition of an already woefully inadequate program. Categorical aid or some kind of "carve out," so widely discussed in the media, is not the ultimate solution. The

adequacy budget has to be modified in order to bear a rational relationship to the number of students and the services they receive.

Petitioners also respectfully request that the Commissioner of Education recommend legislation to modify the SFRA so that the full special education cost, rather than a census cost based on public school enrollment, is used in calculating the adequacy budget for K-12 3,500+ districts with nonpublic populations greater than public school enrollment.

#### PROCEDURAL HISTORY

On June 24, 2014, Petitioners, parents and students of public and nonpublic schools in Lakewood filed a petition with the Commissioner of Education challenging the allocation method and the amount of State funding received by the Lakewood School District.

On July 7, 2014 Petitioners submitted an Amended Petition. On September 2, 2014 the Respondents moved to dismiss the Petition for failure to name the Lakewood Board of Education as a party, for failure to allege a sufficient factual basis to demonstrate the Petitioners' standing, and because the remedies sought are not available in this type of proceeding. The Commissioner of Education subsequently sent the matter to the Office of Administrative Law.

On January 14, 2015 Professor Paul L. Tractenberg moved for leave to participate.

On March 11, 2015 the Court granted Professor Tractenberg leave to participate.

On July 23, 2015 the Court denied Respondents' motion to dismiss.

On February 19, 2016, Petitioners moved for summary decision.

On July 19, 2016 the Court denied the motion for summary decision.

On October 4, 2016 the Lakewood Board of Education moved to participate.

On November 21, 2016 the Court granted the Lakewood Board of Education's motion to participate.

On February 5, 2018, the Court began an evidentiary hearing in order to create a record of its facts and findings.

On February 22, 2017, Petitioners rested their case.

#### STATEMENT OF THE FACTS

1. Lakewood has approximately 6,000 public school students and 31,000 nonpublic students. (Exhibit 1, Demographic Report of Petitioners' Expert, Dr. Ross Haber, P:21)

2. Dr. Danielle Farrie, Research Director of the Educational Law Center and Petitioners' Expert Witness, certified that the "district must divert \$37-40 million from supporting essential teachers, support staff and programs in Lakewood's adequacy

budget under the SFRA. These include programs for regular education, and programs for at-risk and ELL students. When that \$37-40 million is subtracted from the adequacy budget, the district only has 60-65% of the state and local revenue that the SFRA deems necessary for students to achieve the state's curriculum standards." (Certification of Dr. Danielle Farrie).

3. Lakewood is 35% to 40% below adequacy. (Id. Lakewood School District: Expenditures and Revenues under SFRA)

4. 5,840 students attending nonpublic schools are classified as students with disabilities. (Exhibit 2 P:14)

5. 7,186 K-12 students in the district students with disabilities. (Id.).

6. The cost of providing special services to a population of 37,000 children, in which 7,186 have disabilities eligible for a Free and Appropriate Public Education (FAPE), has devastated the ability of the district to provide T & E for its 6,000 regular education public school students.

7. The projected 2018-19 cost of Special Education will be \$55,719,428 (\$58,622,034 - \$2,902,606 sp. ed. transportation cost), an increase of \$6.34 million above the 2017-18 current. (Exhibit 3, P:23, Foundation found in Testimony of Business Administrator Robert Finger, Transcript 2, page 164, line 17 to 18 hereafter T2 RF 164-17 to 18).

8. The SFRA adequacy budget for Lakewood public schools pursuant to N.J.S.A. 18A:7F-51 is \$109,857,390. (Exhibit 4, Full

State Aid Notice, P:3)

9. The local fair share is \$102,034,106. (Id.).

10. "Adequacy as defined" pursuant to NJSA 18A:7F-47 is \$117,325,784. (Id.).

11. SFRA adequacy for Lakewood includes \$10,020,127 for special education and \$111,334 for speech, the lion's share of which is paid through local taxation in the local fair share.

12. Categorical aid received for special education, based on FY18, the latest available, includes \$3,053,082 for special education aid and \$5,200,000 for extraordinary aid. (Id.).

13. The total amount allocated and recognized for special education by the SFRA in its adequacy budget and through categorical aid is \$18,384,543. (Id.).

14. The SFRA fails to account for \$37,334,885 (55,719,428 - \$18,384,543) in special education expenses that must come out of the Lakewood T & E budget.

15. In 2018-19 the projected cost of Transportation will be \$33,078,756 (including \$2,902,606 sp. ed. transportation cost), an increase of \$6.2 million above the current year to date. (Exhibit 3, P:23).

16. Categorical transportation aid received was \$4,199,793 and \$5,851,330 will be received as the LSTA reimbursement. (Exhibit 5, P:26, Foundation found in T2 RF 164-24 to 165-3).

17. The net drain on T & E from mandated transportation after deducting this year's aid from the \$33,078,756 projected for

2018-19 will be \$23,027,633.

18. The total cost of mandated special education and transportation in 2018-19 is projected to be \$88,798,184.

19. After deducting state aid and reimbursements, the total drain on the district that must come out of what otherwise is meant for T & E in 2018-19 is projected at \$63,265,124.

20. The \$63,265,124 projection for special education and transportation serves a population of 37,000 K-12 students in a district with an adequacy budget designed for 6,000 students.

21. The 2017-18 operating budget of \$143,455,116 included a \$8,522,678 loans against future state aid. (Exhibit 6, 2017-18 User Friendly Budget, P:5).

22. Revenue was \$134,923,438 (143,455,116 - 8,522,678).

23. The current 2017-18 cost of Special Education is \$49,030,262 (\$52,093,457- \$3,063,195 sp. ed. transportation cost). (Exhibit3, P:23).

24. After deducting \$10,020,127 in SFRA adequacy for special education, \$111,334 for speech, \$3,053,082 for categorical special education aid and \$5,200,000 for extraordinary aid the net cost that came out of the T & E funding is \$34,054,196.

25. In 2017-18 the cost of Transportation was \$28,703,031 (including \$3,063,195 sp. ed. transportation cost). After deducting \$4,199,793 in transportation aid and the \$5,851,330 LSTA reimbursement, the net cost that came out of T & E funding was \$\$20,787,468. (Id.).

26. The \$54,841,664 total net cost coming out of T & E is 38% of the \$143,455,116 operating budget including the \$8,522,678 loan against future state aid.

27. The 2017-18 cost of serving the population of 37,000 k-12 students was \$29,209,390 for Tuition to Private Schools In State; \$2,751,585 for extraordinary services and \$28,703,031 for transportation, a total of \$60,664,006. (Id.).

28. The SFRA cost for the 296 students Lakewood sent to private schools for the handicapped in 2017-18 is approximately \$3,971,974;  $296 \times \$11,042 \times 0.96780 = \$3,163,188$  for base cost;  $296 \times .1492 \times \$17,085 \times 0.96780 = \$754,528$  for special education adequacy and categorical aid;  $296 \times .163 \times 1,162 \times 0.96780 = \$54,258$  for speech. (Using the SFRA parameters in Exhibit 4, P:3).

29. The \$60,664,006 spent on serving a population of 37,000 K-12 children would have left only \$74,259,432 remaining for T & E of the total \$134,923,438 in revenue had it not been for the state loans.

30. The SFRA "adequacy as defined" for Lakewood is \$117,325,784 comprising approximately \$3,163,188 generated for the 296 students sent to schools for the handicapped and \$114,162,596 for T & E for students in Lakewood public schools.

31. The \$74,259,432 in revenue for T & E serving the 6,000 public school students is 35% below adequacy of \$114,162,596.

32. This percentage is certain to rise because the tuition for

schools for the handicapped is projected to increase by \$6 million to \$35,908,287 in 2018-19 and transportation is projected to increase by \$4,375,725 to \$33,078,756.

33. The arbitrary and capricious methodology of calculating adequacy, ignoring the existence of the of a population 37,000 K-12 children in Lakewood, has resulted in deficits necessitating loans against future state aid for \$4,500,000 in 2015-16, \$5,640,183 in 2016-17 and \$8,522,678 in 2017-18 just to maintain an unconstitutionally inadequate program that had been in decline for over a decade.

34. Lakewood Per Pupil Amount Classroom Instruction, followed by rank out of 101 3500+ K-12 districts, has declined significantly over the last 15 years: 2003-04 \$6,046 (54) 2004-05 \$7,365 (82) 2005-06 \$6,528 (42) 2006-07 \$6,357 (23) 2007-08 \$7,112 (43) 2008-09 \$7,132 (32) 2009-10 \$7,309 (21) 2010-11 \$7,439 (31) 2011-12 \$7,506 (27) 2012-13 \$7,486 (19) 2013-14 \$7,260 (10) 2014-15 \$6,585 (3) 2015-16 \$6,600 (1) (Exhibit 7, P:1)<sup>1</sup>

32. State Average Per Pupil Amount Classroom Instruction 3500+ k-12 2003-04 6,240 2004-05 \$6,604 2005-06 \$6,902 2006-07 \$6,815 2007-08 \$7,538 2008-09 \$7,776 2009-10 \$8,042 2010-11 \$7,904 2011-12 \$8,202 2012-13 \$8,421 2013-14 \$8,596 2014-15 \$8,686 2015-16 \$9,040.

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<sup>1</sup> <http://www.state.nj.us/education/guide/2017/ind02.shtml>

33. Examining performance on seven grade level tests, grades 3 through 8 and 11, in both language arts and math between 2006 and 2014 (except ASK8 which started in 2008) provides 14 instances to examine Lakewood's performance relative to other districts in the state. In 12 of the 14 areas, Lakewood's performance declined over the period in question. For example, Lakewood scored in the 18th percentile on 4th grade Language Arts in 2006 and fell to the 2nd percentile in 2014. The district scored in the 29th percentile on 4th grade Math in 2006 and fell to the 3rd percentile in 2014. (Exhibit 8, Expert Report of Danielle Farrie, Ph.D., of the Education Law Center, P:44 at 7).

34. Lakewood's programs and staffing have been decimated since 2004.

35. Lakewood had two assistant superintendents in 2004. (Exhibit 9, P:55).

36. Before 2005, Lakewood had the following content supervisory positions Supervisor of Foreign Languages, Director of Science and Social Studies, Director of Mathematics and Gifted & Talented, Supervisor of Fine Arts and Public Relations, Director of Language Arts, Director of Curriculum. (Exhibit 10, P:54):

37. Lakewood had a Community School in 2004. (Id.)

38. The last of the industrial art classes at Lakewood

High School (metal shop, wood shop and auto shop) was abolished in 2011. (Exhibit 11, P:53).

39. Currently Lakewood has the following content supervisor positions: Supervisor of Guidance & Testing, Bilingual/ESL Education & World Language, Title I Instructional Supervisor & K-2 ELA Supervisor, Supervisor of STEM, Supervisor of ELA 3-12, Social Studies & Fine Arts. (Exhibit 12, P:52)

40. Lakewood does not currently have an assistant superintendent. (Id.)

41. Comparing to the three surrounding districts in Ocean Country, Toms River Regional, Brick and Jackson in 2017-18, Toms River has the following core content supervisors Mathematics (high school), Mathematics (intermediate school), Science (high school), Science (intermediate school), English (high school), English (intermediate school), Social Studies, World language, Health/Phys. Education, Career Tech/Technology, Fine Arts (Assistant Principal of each building). (Exhibit 13, P:45).

42. In 2017-18 Toms River has three assistant superintendents. (Id.)

43. In 2017-18 Brick had the following content supervisory positions English Supervisor, Math Supervisor, Science Supervisor, Social studies Supervisor, Foreign Language and Language Arts Supervisor. (Exhibit 14, P:46)

44. In 2017-18 Brick had four district directors (assistant superintendents) (Id.)

45. In 2017-18 Jackson had two assistant superintendents and the following content supervisory positions: Director of Curriculum - Humanities, Director of Curriculum - STEM, Supervisor of Literacy, Pre-K - 5, Supervisor of Literacy, 6-12, Supervisor of Science. (Exhibit 15, P:47).

46. Lakewood is the only district in Ocean County with failing schools. (Exhibit 16, New Jersey Department of Education Office of Comprehensive Support Priority and Focus school list, Updated 9/5/2017, P:44A).

47. The average teacher experience in Lakewood is 8.3 years compared with the 11.8 median of all districts in its category. (Exhibit 17, Taxpayer Guide to Educational Spending Lakewood, P:10-2).

48. Lakewood spends \$153 for classroom supplies per student ranking 9<sup>th</sup> of 101 in its category.

49. Lakewood spends \$113 per pupil for legal services, the second in highest in its category.

50. Only 44.5% Lakewood students are in post-secondary education 16 months after graduation whereas the state average is 76.1% (Exhibit 18, NJ School Performance Report Lakewood 2016-17, P:38 at 22).

51. Only 24.1% of Lakewood students are in a 4-year institution the fall after graduation whereas the state

average is 70.5 % (Id. at 22).

52. SAT scores reported on 2016-17 School Performance Report, Reading and Writing score for Lakewood 448, state 551. (Id. at 15).

53. SAT scores reported on 2016-17 School Performance Report, SAT - Math Lakewood 452, State 552. (Id. at 15).

54. ENC\_RES (Residential Enrollment) FY18 Passaic 13,910 Paterson 27,969 Lakewood 5,920 Newark 50,134. (Exhibit 19, Revised table of FY18 State Aid, P:2; Full spreadsheet P:25).<sup>2</sup>

55. The number of children Lakewood sends to private schools for the handicapped compares with the state's largest districts because Lakewood's base population of 37,000 children eligible for FAPE is the second largest K-12 in the state. ENC\_PSH (Sent to Private Schools for the Handicapped) Passaic 213 Paterson 229 Lakewood 296 Newark 301. (Id.)

56. The following data from INFO ONLY FY18\_FORMATTED.xlsx

District	ENC_RES (Residential Enrollment)	ADQ_BUD (SFRA Adequacy Budget)	EQA_LSHR (SFRA Local Fair Share)	PBD_GFT (Prebudget Year General Fund Tax Levy)	PBD_GFT / ENC_RES Tax Per Pupil	STA_NEWBUD (Effective Adequacy Budget)
Bridgeton City	5,709	\$108,226,939	\$9,138,330	\$3,637,144	\$637	\$115,624,407
Camden City	15,351	\$286,966,164	\$27,245,114	\$7,449,009	\$485	\$306,768,664
Passaic City	13,910	\$275,017,798	\$47,919,430	\$16,818,577	\$1,209	\$293,688,660
Paterson City	27,969	\$541,064,933	\$92,447,333	\$41,455,956	\$1,482	\$578,028,745

<sup>2</sup> FY15 to FY 18 State Aid Notices to Districts State Aid produced by Susan Ecks, Supervisor of State Aid Research and Data Analysis

New Brunswick City	9,470	\$191,882,882	\$38,390,378	\$28,900,000	\$3,052	\$205,037,469
Lakewood Twp	5,920	\$109,857,390	\$102,034,106	\$94,088,028	\$15,895	\$117,325,784
Newark City	50,134	\$995,222,661	\$175,851,728	\$123,185,636	\$2,457	\$1,063,715,762
Trenton City	14,416	\$284,692,632	\$38,830,375	\$21,537,975	\$1,494	\$304,158,096
Salem City	991	\$17,403,012	\$2,483,877	\$2,392,321	\$2,414	\$18,608,745
Union City	12,156	\$253,950,237	\$49,554,960	\$15,418,637	\$1,268	\$271,130,937
Pleasantville City	3,575	\$66,899,642	\$11,418,580	\$8,477,742	\$2,371	\$71,483,688
East Orange	9,752	\$181,153,850	\$41,816,219	\$21,058,051	\$2,159	\$193,640,622
Elizabeth City	24,951	\$504,890,631	\$95,899,069	\$59,813,124	\$2,397	\$539,202,303
City Of Orange Twp	5,208	\$99,690,027	\$20,955,735	\$11,926,140	\$2,290	\$106,506,920
Perth Amboy City	10,201	\$200,939,447	\$42,002,134	\$22,762,553	\$2,231	\$214,614,466
Asbury Park City	2,246	\$42,721,296	\$16,234,325	\$6,768,451	\$3,014	\$45,656,475
Irvington Township	7,420	\$144,815,087	\$34,204,080	\$17,459,529	\$2,353	\$154,797,573
Keansburg Boro	1,444	\$25,739,593	\$7,428,109	\$4,965,660	\$3,440	\$27,513,764
Phillipsburg Town	2,591	\$45,565,972	\$11,332,898	\$11,265,147	\$4,348	\$48,710,216
Harrison Town	2,092	\$41,422,709	\$16,876,180	\$9,229,913	\$4,412	\$44,248,433
Gloucester City	1,888	\$33,597,382	\$8,607,965	\$5,227,609	\$2,769	\$35,922,961
Millville City	4,849	\$81,364,090	\$24,569,542	\$11,772,394	\$2,428	\$86,979,030
Plainfield City	9,577	\$196,473,127	\$41,483,365	\$24,295,492	\$2,537	\$209,723,491
Garfield City	4,899	\$88,984,573	\$29,924,548	\$27,658,770	\$5,646	\$95,113,210
West New York Town	7,591	\$154,070,100	\$44,357,307	\$16,061,559	\$2,116	\$164,580,486
Vineland City	10,077	\$170,178,545	\$60,177,492	\$22,609,389	\$2,244	\$181,869,883
Burlington City	1,374	\$23,332,485	\$9,058,415	\$11,373,612	\$8,278	\$24,949,490
Pemberton Twp	4,347	\$70,840,126	\$21,457,323	\$12,250,202	\$2,818	\$75,787,219
Long Branch City	5,022	\$97,458,172	\$50,529,775	\$40,627,100	\$8,090	\$104,117,954
Jersey City	30,560	\$584,758,085	\$370,261,455	\$114,404,361	\$3,744	\$624,936,572
Neptune Twp	3,696	\$63,493,363	\$44,427,609	\$36,756,362	\$9,946	\$67,840,442
Hoboken City	2,596	\$42,956,579	\$204,865,488	\$42,502,765	\$16,372	\$46,001,108
Brick Twp	8,753	\$126,108,070	\$131,139,151	\$101,139,586	\$11,556	\$134,654,611
Howell Twp	5,841	\$78,981,894	\$62,546,292	\$71,157,372	\$12,182	\$84,440,623
Jackson Twp	8,440	\$118,266,946	\$93,334,314	\$79,273,729	\$9,393	\$126,166,450
Toms River Regional	15,623	\$224,453,266	\$197,593,919	\$144,911,387	\$9,276	\$239,629,867

33. The taxpayers of Lakewood raise \$15,895 in taxes per pupil, more than any other urban low-income district with the exception of Hoboken, and more than all surrounding neighboring suburban districts.

34. The tax base of Lakewood does not have to capacity to provide T & E on its own.

35. If all 31,000 children went to the public schools, Lakewood would receive over \$750,000,000 in state aid while the Local Fair Share of \$102,034,106 would not significantly change. (Exhibit 20, Thought Experiment).

36. 21,162 or 72% of children attending nonpublic schools in Lakewood are low-income (Exhibit 2, P:14).

37. The following data is from public sources as indicated (last column is just a mathematical calculation):

District	Median Household income 2010 (P:7-1) <sup>3</sup>	Per Capita Income Us Census 2010 (P:7-1)	Per-capita income rank of 564 NJ municipalities (P:7-1)	Populations, July 1, 2016 US Census <sup>4</sup>	2016 LABOR FORCE (P:7-3) <sup>5</sup>	2016 Labor Force/ Population estimates, July 1, 2016
Bridgeton City	\$31,044	\$12,418	564	24,997	8,346	33.4%
Camden City	\$27,027	\$12,807	563	74,420	26,635	35.8%
Passaic City	\$31,135	\$14,424	562	70,635	29,843	42.2%
Paterson City	\$34,086	\$15,543	560	147,000	62,144	42.3%
New Brunswick City	\$44,543	\$16,395	556	56,910	27,170	47.7%
Lakewood Twp	\$41,527	\$16,430	555	100,758	30,739	30.5%
Lakewood Census Designated Place	\$36,516	\$11,895				
Newark City	\$35,659	\$17,367	554	281,764	117,053	41.5%
Trenton	\$36,601	\$17,400	553	84,056	39,178	46.6%

<sup>3</sup> First three columns are from the following spreadsheet:

<http://lwd.dol.state.nj.us/labor/lpa/industry/incpov/2010income.html>

<sup>4</sup> <https://www.census.gov/quickfacts/fact/table/lakewoodtownshipoceancountynewjersey/PST045216>

<sup>5</sup> [http://lwd.state.nj.us/labor/lpa/employ/uirate/lfest\\_index.html](http://lwd.state.nj.us/labor/lpa/employ/uirate/lfest_index.html)

City						
Salem City	\$25,682	\$17,733	552		1,753	
Union City	\$40,173	\$18,506	549	69,296	34,904	50.4%
Pleasantville City	\$39,560	\$18,527	548	20,492	8,905	43.5%
East Orange	\$40,358	\$20,298	540	64,789	29,840	46.1%
Elizabeth City	\$43,770	\$19,196	546	128,640	62,924	48.9%
City Of Orange Twp	\$40,818	\$19,816	544	30,583	14,025	45.9%
Perth Amboy City	\$47,696	\$20,162	541	52,499	25,198	48.0%
Asbury Park City	\$33,527	\$20,368	538	15,722	7,479	47.6%
Irvington Township	\$42,580	\$20,520	536	54,425	25,131	46.2%
Keansburg Boro	\$39,206	\$21,246	530	9,826	5,167	52.6%
Phillipsburg Town	\$42,825	\$21,291	529	14,455	7,090	49.0%
Harrison Town	\$51,193	\$21,857	527	16,231	6,738	41.5%
Gloucester City	\$52,222	\$22,718	522	11,339	5,460	48.2%
Millville City	\$44,925	\$23,364	516	28,059	13,298	47.4%
Plainfield City	\$52,056	\$23,767	514	50,636	27,155	53.6%
Garfield City	\$51,407	\$24,022	512	31,876	16,068	50.4%
West New York Town	\$44,657	\$24,419	508	53,343	28,501	53.4%
Vineland City	\$54,024	\$24,512	506	60,525	28,340	46.8%
Burlington City	\$48,317	\$24,612	503	9,866	5,205	52.8%
Pemberton Twp	\$63,309	\$26,240	475	27,567	12,138	44.0%
Long Branch City	\$52,792	\$30,381	395	30,763	16,369	53.2%
Jersey City	\$54,280	\$30,490	388	264,152	140,479	53.2%
Neptune Twp	\$58,630	\$30,656	382	27,789	15,031	54.1%
Hoboken City	\$101,782	\$69,085	29	54,379	36,488	67.1%
Brick Twp	\$65,129	\$33,258	325	75,061	39,516	52.6%
Howell Twp	\$89,287	\$35,439	280	52,245	28,170	53.9%
Jackson Twp	\$86,327	\$34,521	295	56,733	29,576	52.1%
Toms River Regional	\$71,934	\$33,423	321	91,837	48,126	52.4%
Toms River Cdp	\$72,434	33,105				

38. Lakewood is the 555 lowest ranking municipality in per capita income of 564 in New Jersey.

39. The following data from the Quickfacts on the US Census website and in P:7-4, P:33 and P:7-5.

District	Median household income (in 2016 dollars), 2012-2016	Per capita income in past 12 months (in 2016 dollars), 2012-2016	Persons in poverty, percent 2017
Bridgeton City	\$35,417	\$13,811	30.4%
Camden City	\$26,214	\$14,110	38.4%
Passaic City	\$33,859	\$15,630	31.9%
Paterson City	\$34,042	\$16,821	29.1%
New Brunswick City	\$40,428	\$14,688	36.0%
Lakewood Twp	\$42,993	\$15,443	31.5%
Lakewood CDP	\$40,966	\$12,275	38.9%
Newark City	\$33,025	\$17,198	29.1%
Trenton City	\$34,412	\$17,130	27.6%
Salem City			
Union City	\$42,483	\$20,995	24.3%
Pleasantville City	\$42,971	\$17,889	23.9%
East Orange	\$38,403	\$22,246	20.2%
Elizabeth City	\$43,831	\$18,686	19.0%
City Of Orange Twp	\$35,895	\$20,140	25.1%
Perth Amboy City	\$49,155	\$19,834	20.4%
Asbury Park City	\$36,512	\$25,031	30.6%
Irvington Township	\$37,538	\$19,479	23.4%
Keansburg Boro	\$44,808	\$28,144	20.3%
Phillipsbu	44,660	25,180	19.6%

rg Town			
Harrison Town	\$58,047	\$27,223	14.4%
Gloucester City	\$53,113	\$23,200	12.4%
Millville City	\$48,892	\$24,804	18.0%
Plainfield City	\$55,657	\$23,594	22.1%
Garfield City	\$48,254	\$23,479	18.6%
West New York Town	\$50,334	\$26,450	21.9%
Vineland City	\$48,986	\$23,886	17.6%
Burlington City	\$52,537	\$28,601	9.4%
Pemberton Twp	\$60,454	\$26,163	12.3%
Long Branch City	\$51,435	\$30,141	17.1%
Jersey City	\$60,703	\$34,887	19.4%
Neptune Twp	\$64,582	\$33,679	10.9%
Hoboken City	\$114,381	\$72,864	10.8%
Brick Twp	\$70,655	\$36,678	6.7%
Howell Twp	\$97,480	\$39,224	4.8%
Jackson Twp	\$86,721	\$36,936	4.3%
Toms River	\$72,180	\$36,155	6.2%
Toms River CDP	\$72,500	\$35,823	6.0%
New Jersey	\$73,702	\$37,538	10.4%

59. Lakewood Census Designated Place (CDP) is the area where most K-12 students live. (Exhibit 21, P:19).

60. Lakewood CDP has the highest percentage of persons in poverty and Lakewood Township is the fourth highest of all urban low-income districts.

61. Lakewood births have risen over the last twenty years with 4,464 births in 2015 compared 4,245 in Newark. (Exhibit 22, P:8).

62. The median age in Lakewood is 21.3. The median age in New Jersey is 39.5. (Exhibit 23, P:39).

63. It is unlikely that the census estimate of 100,758 is accurate given that 92,843 was the actual count in 2010, about 4,000 children were born each year and the median age is 21.3

64. Lakewood likely has a population of 125,000. (Certification of Mr. Henshaw).

65. Lakewood has a labor force of only 30,739 to support a population of approximately 125,000.

66. The households making up the Lakewood tax base are already burdened with the cost of sending 31,000 students to nonpublic schools and supporting a population four times its labor force. The tax base cannot possibly be overburdened to pay more than its local fair share.

67. The inadequate funding for Lakewood has been largely supplanted by federal funding.

68. In 2015-16, Title I funding was generated by 5,232 public free/reduced lunch students and 17,377 nonpublic free/reduced lunch students. (Exhibit 24, P:13-1, P:13-3, P:14 and P:14-1).

69. The 2015-16 Title allocation to Lakewood was \$16,506,961 with carry-over of which \$8,132,831 was disproportionately allocated for public students and \$7,922,338 was for nonpublic

students. (Id.).

70. In 2016-17 Title I funding was generated by 5,121 public free/reduced lunch students and 19,180 nonpublic free/reduced lunch students. (Id.).

71. The 2016-17 Title allocation to Lakewood was \$20,560,286 with carry-over of which \$10,471,991 was disproportionately allocated for public students and \$9,798,517 was for nonpublic students. (Id.).

72. In 2017-18 Title I funding was generated by 4,450 public free/reduced lunch students and 21,162 nonpublic free/reduced lunch students. (Id.).

73. The 2017-18 Title allocation to Lakewood was \$17,725,360 with carry-over of which \$3,950,983 is proportionately for public students and \$13,774,377 is for nonpublic students. (Id.).

74. The loss of disproportionate amounts of federal funding for public schools generated by the large low-income nonpublic population has been devastating on the schools. Lakewood High School received \$1,563,653 in Title I funding and in 2017-18 Lakewood High School received only \$183,026 in Title I funding. (Exhibit 25, P:37).

75. The large amounts of federal funding enabled the district to obtain Smartboards, the Iready program, Letterland, Career Academics program, 3D prints, Mac carts, High School Alternate Program, Stem Program (robotis, podics), a new Culinary

Classroom, TV production studio better known as "Piner Productions", Full Mac labs, 2-story Media center, Fashion design studio, recording arts studio & digital photography studio. Federal funding contributed to the Middle School Alternate program and the Istation program. (Exhibit 26, OPRA February 18, 2018).

76. Even after the \$8.5 million loan for 2017-18, it was necessary for the municipality to contribute a \$1,157,222.00 Grant Award to the Lakewood School District of which \$557,556 restored the sports program except for football. Another \$84,000 was granted to restore football. (Exhibit 27, July 19, 2017 BOE Agenda).

77. The full-time athletic director position, trainer and secretary was not restored leading to the following criticism in an October 19, 2017 NJSIAA Report, "A part time AD, no trainer and minimal secretarial support (45 minutes per day) combined with a full athletic program is not the norm in the state." (Exhibit 28, P:28)

78. The municipality will not be able to support the athletic program or offer grants for the 2018-19 school year. (Certification of Mr. Henshaw).

79. "The continuous state of instability, low salaries, and the need to distribute Reduction-in-Force (RIF) letters three years in a row has had the following negative effects:

School Year	Number of Teachers Who Received a Reduction-in- Force	Number of Teachers Who Resigned
2014-2015	22	55
2015-2016	68	51
2016-2017	140	78

(Exhibit 29, P: February 5, 2018 Letter from Lakewood Superintendent Laura Winters to Commissioner Dr. Lamont Repollet.)

80. Replacing the many teachers that resigned each year due to the fiscal instability and the RIFs the following amounts had to be spent on professional development during the school years 2015-16, 2016-17 and 2017-18 (current) respectively \$1,767,589; \$2,444,580 and \$2,749,208. (Id.).

81. It is extremely difficult to replace teachers that resign because Lakewood has the lowest median teacher salary of all 103 large K-12 districts with 3,500 or more students. (Taxpayer Guide to Educational Spending Lakewood. a) Median Teacher Salary (2016-17): \$52,046; Salary Ranking Within Group (2016-17): 1|101; Median Teacher Salary (2015-16): \$50,436, Salary Ranking Within Group (2015-16): 1|103. (Exhibit 17).

82. The High School Proficiency Assessment Language Arts scores for Lakewood from 2008-2014 were lower than the average and median scores of the Abbott districts (Exhibit 30).

83. The High School Proficiency Assessment Mathematics scores for Lakewood were about half the points of the state average and more than ten points lower than the average and median of the Abbott districts every year since 2009 (Id.).

84. The Grade 8 GEPA and NJ ASK Language Arts score for

Lakewood was below the average and median of the Abbott districts every year since 2004. (Id.).

85. The Grade 8 GEPA and NJ ASK Mathematics score for Lakewood was below the average and median of the Abbott districts every year since 2006. (Id.).

86. The Adjusted Cohort Graduation Rate was at or below the average and median of the Abbott district for the last four years and far below that of the state. (Exhibit 31).

57. 85.9% of Lakewood public school students are Hispanic and 8.2% are African-American (Exhibit 32, Report/Summary of Superintendent Laura Winters Testimony, P:27 at 8).

58. 1,538 students were classified as Limited English Proficiency I 2017-18. (Id. at 6).

STANDARD FOR EMERGENCY RELIEF

N.J.A.C. 6A:3-1.6(b) provides:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

LEGAL ARGUMENT

POINT I. THE PETITIONERS WILL SUFFER IRREPARABLE HARM IF THE REQUESTED RELIEF IS NOT GRANTED.

The calculation of educational adequacy in Lakewood ignores the existence of the of Lakewood's 37,000 K-12 children. This arbitrary and capricious methodology of determining adequate revenue, bearing no rational relationship to the amount of revenue needed in Lakewood, has decimated the rich and broad curriculum for which Lakewood formerly took pride and has made the balancing of the budget all but impossible. The district has needed loans against future state aid for four years in a row; \$4,500,000 in 2015-16, \$5,640,183 in 2016-17, \$8,522,678 in 2017-18 and now \$17 to \$23 million is needed for 2018-19 just to maintain a bare-bones unconstitutionally inadequate program that has been in decline since 2005. Lakewood Business Administrator Robert Finger testified:

THE WITNESS: If nothing changed in the budget, that's -- the School District's starting with an 11 Million Dollar deficit. Salary increases are not included in these numbers at all. When this was presented, I didn't want -- Originally, they were -- I said, "No, we're not going to even allow the -- the Unions to even see even a half

percent." So -- So, it shows no -- nothing for salary increases. The increased benefits cost is estimated at 3.2 Million. The increased tuition is estimated at 5.9 Million. Increase in transportation was 2 Million 283. And the charter school enrollment, that's growing, they're going to be growing a grade. And that's an estimated \$728,000. Now that comes up to 23 Million 290 Dollars. That's the anticipated deficit just looking at these four areas, not including any salary increases, not including anything for increases in textbooks, supplies, rent for new facilities. Now granted, if -- if we rent new facilities -- if the district finds new facilities in time, then maybe some of the increase in tuition would be a little -- will be a little bit less. Because -- But the -- The net -- The net affect would be a reduction in this course. So we're up to 23,2.9 Million. (February 23, 2018 Transcript of Hearing, Testimony of Robert Finger, page 48, line 22 to page 49, line 20, hereafter T2 RF 48-22 to 49-20).

Every year there is a time lag between the announcement of the deficit and the announcement of a loan against future state aid resulting in Reductions in Force (RIFs). There were 22 for 2015-16, 68 for 2016-17 and 140 for 2017-18.

This instability has caused numerous teachers to resign even after the deficits have been covered with loans, 55 resigned for 2015-16, 51 for 2016-17 and 78 for 2017-18. Replacing teachers cost money to train and to professionally develop new teachers, diverting money from improving T & E; \$1,767,589 in 2015-16, \$2,444,580 in 2016-17 and \$2,749,208 in 2017-18. This year's deficit of \$17 to \$23 million is more than last year's deficit of about \$13 or \$14 million that caused 140 RIFs and other cuts to the program. State Monitor, David Shafter, explained:

What happened to that 13 or 14 or whatever it was you just said? A The Superintendent did not recommend the budget. I agreed with the Superintendent. And I also did not -- would not approve the budget. The first draft of the budget. So that's what happened at the first one. Q What -- What kind of cuts were involved in that first draft? A Cuts to Guidance. Cuts to Libraries. Cuts to teachers. Cuts to extracurricular activities. Athletics. There may have been -- Those -- Those were the biggest cuts. Q Do you remember how many teachers they were proposing cutting? A At least 80, 90, if not more. Maybe 100. I don't know the exact number, but it was very substantial. Class sizes then would have been up, in the Elementary Schools, would have been in the 30's. In the Middle School, they would

have been in the 40's. It was -- And it was only regular ed teachers because we can't cut special education teachers. I should say, the District can't. I'm not -- Not we. Q And when the budget was finally adopted, was some of that deficit covered somehow? A So what happened. When it was finally adopted after -- after the District -- And they were in negotiations with the Department of Education. Ultimately what happened was, there was an 11 Million Dollar cut. About 2 Million Dollars of it was for paybacks for prior loans and audits. The agreement was that the State would for -- would forego -- would allow the District to waive one year of payback. And there was an Eight and a Half Million Dollar loan. Some cuts remained. Non-public related services stayed in there -- Or, remained as cuts. Co-curricular activities were all cut. Athletics was cut, other than ones - I think, track was not cut. Soccer was not cut. And one other -- And one other sport was not cut. So that at least the District was offering one of those activities. So those remained cut out of the budget. And there were some other reductions that were cut because -- And they stayed. And that was because the after reviewing the line item, it was determined that that money wouldn't be needed. But the substantial cuts that remained, even

after the loan, was the athletics and the non-public related services. (Testimony of State Monitor, David Shafter, February 22, 2018, hereafter T2 DS 24-10 to 26-14).

Football, baseball and basketball were cut and remained out of the budget even after the district received an \$8.5 million loan for 2017-18. The municipality contributed \$1,157,222 to the Lakewood School District, of which \$557,556 restored the sports program except for football. Another \$84,000 was granted to restore the football program. (Exhibit 27, July 19, 2017 BOE Agenda).

The full-time athletic director position, the trainer and the secretary positions were cut and not restored. Their jobs were replaced with part-time employees. An October 19, 2017 NJSIAA Report criticized this arrangement, "A part time AD, no trainer and minimal secretarial support (45 minutes per day) combined with a full athletic program is not the norm in the state." (Exhibit 30, P:28). At any rate, the municipality will not be able lend any more support to the district. (Certification of Township Manager, Thomas Henshaw). Mr. Shafter has not yet decided what he will do.

MR. LANG: What are the options? THE WITNESS: Excuse --  
The options? BY MR. LANG: Q What are your options? A  
The options are, is to leave the budget unbalanced and  
write a letter to the Department of Education on -- on

my opinion of the budget. An option I have is to reduce the budget by various line items which would result in reductions of staff. May it be teachers, administrators, security guards, nurses, guidance counselors, libraries. Similar -- Similar to what happened last year. Or -- Those are my two options. Q The first option was -- was what? I'm sorry. A Was to leave the budget alone. Let it be submitted not balanced. And write a letter stating why the -- the Board of Education needs the funds in order to balance the budget. Q What -- What -- Then what happens after that? What's -- What is the authority of the Department of Education? A The Department would then review the budget, review the letter, meet with me, meet with, you know, Mr. Azzara, if possible, to go over the budget. What happened last year was that, you know, the County -- the County Business Administrator reviewed the budget. They made some suggestions. I met -- I spoke with him. I said, Well, this suggestion's not possible, and totally explained why. This suggestion's not possible; explained why. And that's -- that's basically what -- They're are the options, for me. Q Last year -- Last year, the reductions in forces, did they go out? A Yes. Q Why did they go out last year? A Because there was -- had -- I was -- We balanced the budget because

you -- By law you have to submit a balanced budget. And that's why a budget was submitted that had those RIF letters in it. (T2 DS 55-24 to 57-12).

RIFs will result in larger class sizes. N.J.A.C. 6A:13-3.1 provides that "Class size in school districts in which 40 percent or more of the students are 'at-risk' as defined in P.L. 2007, c. 260 shall not exceed 21 students in grades kindergarten through three, 23 in grades four and five and 24 students in grades six through 12." Id.<sup>6</sup> At-risk students in Lakewood public schools exceed 40 percent. At-risk students were reported as 87.93% (FY 2015), 90.96% (FY2016), 86.99% (FY 2017) and 75.06% (FY 2018). (Exhibit 19).<sup>7</sup> Class sizes already are in excess of those allowed by the administrative code.

The loans over the last three years did not restore any of the constitutional deficiencies for which the Amended Petition in this docket was filed in July 2014. On the

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<sup>6</sup> "At-risk" is defined by N.J.S.A. 18A:7F-45 as "those resident pupils from households with a household income at or below the most recent federal poverty guidelines available on October 15 of the prebudget year multiplied by 1.85." The federal poverty guidelines provide that the "income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels. . . ." 42 U.S.C. §1758(b)(1)(B). The terms "at-risk," "low income" and "free and reduced lunch" designate the same pupils.

<sup>7</sup> The district's recent participation in the Community Eligibility Program (CEP) allows all students to receive free breakfast and lunch. Parent are now reported to not return the eligibility forms because their children still receive the service due the CEP. Before FY 2018, students did not receive free breakfast and lunch if the low-income percentage has decreased. This is a common trend in CEP districts.

contrary, as many cuts as possible were made to the district program.

Q And the -- And the 16/17 budget, after it was passed, after the loan was adopted, was that a bare-bones budget? A In my opinion, yes. Q And 15/16? A 15/16, there weren't cuts. That was just how the budget was. And again, that was a -- that was an extremely responsible budget. Q Between these three years, was there anything else possible to cut? A I don't believe so, without affecting the services to the students. No. Q And what -- If further cuts would have been made, would there have been increased class sizes? A Either increased class sizes or programs may not have been offered. Things like that. Q Were -- Are you able to cut anything from special education. A No. Q Transportation. A No. Q So where would the cuts would have been made if there had been further cuts? A It would have been coming from regular -- regular education and administration. (T2 DS 28-3 to 29-2). . . . So, how would that affect the regular education in the District? A If cuts were made? Q If further cuts were made. Since you can't cut from special education or transportation. A Increases in class size. And possibly program cuts and other services. Q And -- And would it -- would there have been cuts in -- A Well, the area -- the area -- Q -- staff,

teachers? A The areas that you can cut. Guidance. You can cut libra -- You can cut media. You can cut nursing services. And you can cut, you know, regular education. And you can cut administration. Q You can cut teachers also? A Yes. (T2 DS 29-33 to 30-14).

What are the terms of the loans that -- over the years?

A Ten year payback. (T2 DS 66-24 to 67-1).

Lead State Monitor Mike Azzara also said that nothing else could be cut.

And we have mandated transportation that we brought in-house, and we're going to save some money. And we're operating as efficiently as we can. I mean, we could always look for more economies, but at this point I -- I couldn't really tell you where we'd find them. And courtesy busing for public school students is paid for by the Township. Q And what about special education expenses? Is -- Could that -- Can they be cut? A No. I mean, they're all -- they're all pretty much governed by law and the State Department of Education rules and regulations. Q So if you had to make cuts, where - where can they be made? A I -- You know, I don't feel we can. (Testimony of Lead State Monoitor, Michael Azzara, February 22, 2018, hereafter T2 MA 109-5 to 20).

If Respondents do not act quickly to assure staff and

faculty that the deficit will be filled, teachers will find jobs in other districts and new teachers without experience will be hired for next year in a district with large numbers of at-risk children. Mr. Shafter said that RIFs might have to go out despite the district's assurances that they will not:

I said, if -- if it's not resolved by May will it be necessary to send out RIFs. That's my question. THE WITNESS: It will be necessary to send out RIFS unless, for some reason -- I'm not even going to -- I'm not even going to go there. It would be necessary to send out -- send out RIFs. BY MR. LANG: Q So your answer is affirmative. It will be necessary to send out RIFs, if it's not resolved. A In order to balance the budget. Yes. Q Okay. All right. THE COURT: If the situation's not otherwise resolved. THE WITNESS: By a increase in revenue. (T2 DS 58-20 to 59-9).

**Petitioners respectfully request** emergency relief pursuant to N.J.A.C. 1:1-12.6 that Respondents immediately take action to close the 2018-19 projected deficit.

**Petitioners also respectfully request** that the state defer all payment of past loans so that more funds are available for T & E. Mr. Finger testified that Respondents have been requiring payments.

A We were advised -- I was advised by the State Monitor,

Mr. Shafter, that it's -- there's a good likelihood that we'll have to pay back at least 2 point -- a little -- almost 2.1 Million in the 18/19 budget. So that when I'm putting the budget together, to at least for right now, budget for that. (T2 RF 160-2 to 7).

Q If the State doesn't request that Lakewood pay back the loans. Those funds that were satisfied in the budget can be redistributed for other general fund expenses. Is that correct? A Theoretically, yes. (T2 RF 160-23 to 161-2)

**Petitioners also respectfully request** that Respondents are held to their promises to defer payments on previous loans.

Q As we speak now, is there money that was promised to be deferred that is still being taken? A Yes. The State's been taking it out, I believe, since -- since September. Q Okay. And this is -- And even -- And they said they would not do that? A The verbal promise made - - Apparently, verbal promise made to our State Monitor, in touch with his office, was that, when it started to come out, that it was in error and the Treasury would correct it. And the months have just gone on and the Treasury's not correcting it. (T2 RF 187-17 to 187-3).

A substantial amount of money is owed because of advances in state aid loans to cover the recent deficits.

So, do you know the total between all the years, how much the District owes? A 8 and a half. 4 and a half. That's about 13. And another 5. Probably about 17 Million. (T2 DS 50-15 to 19).

The loss of experienced teachers and the larger class sizes will cause irreparable damage to the district's students. The education the students of today will lose will not be restored with a favorable disposition on the merits and subsequent remedy for our future students.

This case is already four years old and matters have only gotten worse. The students of today have only one chance to get an education and if the state fails to provide them with it, they either will drop out of school or graduate below the necessary standard. Students in Lakewood Public Schools have a right under the New Jersey Constitution for a thorough and efficient public education.

The Commissioner of Education has broad powers to gather evidence, correct deficits and make determinations and recommendations as that which is necessary to provide for T & E. "New Jersey's highest court has uniformly taken an expansive view of these powers, and has consistently upheld the Commissioner's authority to do whatever may be reasonably necessary to carry out the constitutional directive." McCarroll v. Bd. of Ed. of Jersey City, 13 N.J.A.R. 1, 62 (1979).

A. THE FAILURE TO INCLUDE THE EXPENSE OF SERVING THE UNIQUE DEMOGRAPHY OF LAKEWOOD IN THE ADEQUACY BUDGET HAS CAUSED SIGNIFICANT BUDGETARY DEFICITS, LOW TEACHER SALARIES, THE ELIMINATION OF COURSES AND PROGRAMS, AND UNACCEPTABLY LOW TEST SCORES AND LOW ENROLLMENT IN POST-SECONDARY INSTITUTIONS.

Lakewood funding is 35% to 40% below adequacy.

[T]he ways in which Lakewood's required spending in Transportation and Special Education are far beyond what is provided under SFRA because of its unique nonpublic population. The excess spending in these areas necessitate reducing expenditures in other areas - namely the adequacy budget for regular education, English language learners (ELL), and at risk (low-income) students. On February 12, 2018 I created the document "Lakewood School District: Expenditures and Revenues under SFRA" (hereafter "the document"). The document is attached. Using data publicly available for the three most recent years (2016 - 2018), in the document I compare the district's expenditures in special education and transportation to the funding that is provided under a fully implemented SFRA. Even accounting for additional state aids the district receives (Extraordinary aid and State funding to support the Transportation Authority pilot program), the district is left with a \$37-40 million annual gap between expenditures and revenues for special education and transportation. Because this spending is not

discretionary, the district must divert \$37-40 million from supporting essential teachers, support staff and programs in Lakewood's adequacy budget under the SFRA. These include programs for regular education, and programs for at-risk and ELL students. When that \$37-40 million is subtracted from the adequacy budget, the district only has 60-65% of the state and local revenue that the SFRA deems necessary for students to achieve the state's curriculum standards. My analysis assumes that the district receives bot full funding of state aid and the local fair share. In other words, this is the best-case scenario. In reality, the district may be underfunded from both state and local revenues, further exacerbating the effect on the ability of the district to fund the adequacy budget for regular education, at-risk, and ELL students. (Certification of Funding Expert, Dr. Danielle Farrie, Director of Researach, Educational Law Center).

The drain on the budget has made it impossible for the district to provide its public school students with T & E. The witnesses have testified that the district does not provide intervention, remediation specialists and in-house curriculum supervisors, closed down its industrial arts program, does not have a rich curriculum and has oversized classes. The reason is because nonpublic students do not

count. The State Monitor David Shafter testified:

A Lakewood has -- has a unique student population. Q Can you explain that? A In most districts, your -- your public school population is -- is the greater of the -- Between public school and non-public school, your public school population is the greater of the two. For example, in -- in the City of Camden, there are, you know, thousands of -- I think at the time when I was there, it was about 13, 14 thousand public school students, and we sent -- And the non-public population was a very small percentage of that. East Windsor Regional, the non-public population was very small. There was -- There were maybe two non-public schools. One was located right -- right in East Windsor Township. And another was -- was located just outside the Township, that -- that the school had to provide non-public services for. In Lakewood, you have a public school population of about 6,000 students and a non-public population of about 30,000 students. And -- And that's what makes Lakewood unique from any other district that I have worked in. Q And what kind of challenges does that cause you as a fiscal -- as the fiscal monitor? A The challenge is -- is that, in my previous districts, when you -- when you raise your taxes, you would have your -- you would have your --

your adjustment based on population. You could do that if your population was growing. And it was enough to have a pub -- the increase for the public school, the increase for with the cap, whatever that at the time, and that always changes throughout the years. And State aid would also be increasing. What's happened in my final years of Camden, and then when I came to Lakewood is that, what happens is that the Lakewood public school population stays relatively the same. In one year there was an estimate that -- that it would increase more than a percentage, which would allow for a growth adjustment. But it was just for the one year and it was a very small adjustment. Where the non-public population has been increasing about ten percent a year. In a district where your non-public population is the smaller of the two percentages, your -- your taxes and your increase in State aid are sufficient to cover the costs that have to be paid now for the non-public population. Now, for example, -- you do get categorical aid, which includes transportation, aid in lieu, and transportation of your non-public students. But even - - even -- The way the formula's supposed to work, you get your categorical aid. Then you use some of your equalization aid. And then you use some of your tax money. And that's how the students are transported.

But when your categorical aid is frozen, and when your equalization aid is frozen, and your tax rate can only go up two percent, and you have a non-public population that's increasing, then the only place that's -- that's left to take the money from, is from the public school students. Q Now you mentioned, the only places to take from the public school students. Does Lakewood staffing -- Is it above the State levels or below, from your knowledge? A Well, the State has a model. For example, I think it's grades K-2 is 21. Grades 2 through 8 is 22 students. And Grade 9 through 12, 23 students, as the student teacher ratio. And Lakewood student teacher ratio, there's much -- the students per teacher is much higher than those in the model. I think in the Middle School it's about 28, 29, as opposed to 23. The High School, I'm not too sure about. Elementary School, the last time I looked at it, it was about 24 -- You know, a few students higher per teacher. Q And what about administrators. Does Lakewood have less or more of them than the State model? A Less -- They have less than the State model. (T2 DS 37-16 to 40-15).

Camden, I did not have a problem in Camden regarding matching expenditures to revenues. It was -- It was always easy to balance the budget - (T2 DS 63-10 to 12.)

The Adjusted Cohort Graduation Rate was at or below the average and median of the Abbott districts for the last four years and far below that of the state despite a recent slight increase. (Exhibit 33). This low rate, no doubt, is related to the number of staff members leaving each year due to the lack of financial and job stability. The Abbott IV Court noted that quality of the teacher and class sizes has a substantial effect on education citing, "Richard J. Murnane, Interpreting the Evidence on "Does Money Matter?", 28 Harv. J. on Legis. 457 (1991) (finding that money, if spent prudently on such things as teachers and class-size reduction, has a substantial effect on education)." Abbott by Abbott v. Burke, 149 N.J. 145, 193 (1997). Judge Lefelt in the found that "larger urban class sizes and larger student bodies which tend to de-personalize the students' educational experiences also falls heaviest on potential dropouts." Abbott v. Burke, EDU 5581-85 (initial decision), August 24, 1988, at 224.

There is a direct correlation between funds available for classroom instruction and test scores in Lakewood. Dr. Farrie explained in her report:

[T]he excess spending in Transportation and Special Education necessarily pushes the district further below adequacy in the other areas, whether that is the

general education program or support services for at risk students and those learning English. This is illustrated in a comparison of per pupil spending on classroom instruction from the NJDOE's Comparative Spending Guide. Comparing Lakewood with other large, K-12 districts, the gap in average per pupil spending on classroom instruction grows significantly over time. In 1999-2000, Lakewood spent about the same as the other districts at about \$5,000 per pupil. By 2015-16, Lakewood's classroom instruction spending only increased by \$600, not accounting for inflation, while the average spending nearly doubled to just over \$9,000 per pupil. (Exhibit 8, Expert Report at 6).

Lakewood Per Pupil Amount Classroom Instruction, followed by rank out of 101 3500+ K-12 districts, has declined significantly over the last 15 years: 2003-04 \$6,046 (54)  
 2004-05 \$7,365 (82) 2005-06 \$6,528 (42) 2006-07 \$6,357 (23)  
 2007-08 \$7,112 (43) 2008-09 \$7,132 (32) 2009-10 \$7,309 (21)  
 2010-11 \$7,439 (31) 2011-12 \$7,506 (27) 2012-13 \$7,486 (19)  
 2013-14 \$7,260 (10) 2014-15 \$6,585 (3) 2015-16 \$6,600

(1) (Exhibit 7, P:1)<sup>8</sup> The State Average Per Pupil Amount Classroom Instruction 3500+ k-12 2003-04 6,240 2004-05 \$6,604 2005-06 \$6,902 2006-07 \$6,815 2007-08 \$7,538 2008-09 \$7,776 2009-10 \$8,042 2010-11 \$7,904 2011-12 \$8,202 2012-13

<sup>8</sup> <http://www.state.nj.us/education/guide/2017/ind02.shtml>

\$8,421 2013-14 \$8,596 2014-15 \$8,686 2015-16 \$9,040. During this same time period, Lakewood test scores dramatically declined.

Examining performance on seven grade level tests, grades 3 through 8 and 11, in both language arts and math between 2006 and 2014 (except ASK8 which started in 2008) provides 14 instances to examine Lakewood's performance relative to other districts in the state. In 12 of the 14 areas, Lakewood's performance declined over the period in question. For example, Lakewood scored in the 18th percentile on 4th grade Language Arts in 2006 and fell to the 2nd percentile in 2014. The district scored in the 29<sup>th</sup> percentile on 4th grade Math in 2006 and fell to the 3rd percentile in 2014. (Id. at 7).

The High School Proficiency Assessment Language Arts scores for Lakewood from 2008-2014 were lower than the average and median scores of the Abbott districts (Exhibit 30). The High School Proficiency Assessment Mathematics scores for Lakewood were about half the points of the state average and more than ten points lower than the average and median of the Abbott districts every year since 2009 (Id.). The Grade 8 GEPA and NJ ASK Language Arts score for Lakewood was below the average and median of the Abbott districts

every year since 2004. (Id.). The Grade 8 GEPA and NJ ASK Mathematics score for Lakewood was below the average and median of the Abbott districts every year since 2006. (Id.).

THE WITNESS: So because state tests have changed over time and it makes year to year comparisons difficult, what I did was just change each of the test scores, like the raw test scores into a percentile rank, so you could see where Lakewood fell relative to all the other districts in the State, and I looked at each of the statewide assessments from third grade through the HESPA, which is the 11th grade, was the 11th grade assessment, and you can see that in nearly every testing group, both language arts and math, the Lakewood schools saw a drop in their relative performance such that the district is now performing in like the lowest 5 percent of all districts across the state in nearly every area, and this is from a district that had been performing, you know, it changes by test, but somewhere between, you know, 12 and 10 and 22 percent, 29 percent rather. So there has been a significant decline in its relative performance compared to other districts. Q Last page? A So essentially my conclusion is that the School Funding Reform Act, although it has -- although it's a national model of school funding, there are circumstances in

Lakewood that make it an extreme case and an extreme circumstance where the funding structure does not meet the needs of the students in the schools, and this has caused Lakewood to be in a state of constant fiscal distress where, you know, the transportation and special education costs are essentially eating up all other areas of the budget, requiring Lakewood to spend excessive amounts of money in those areas, and because there is only a finite of revenue available, it necessarily has to take from other areas of the budget. The stagnant instructional spending is one of those areas. There is a strong correlation between that decline in instructional spending with academic performance, and yeah, I think that there are changes that are necessary in order to make sure that the Lakewood students are being provided with the education that they are entitled to. Q Changes in what? A In the funding structure. So there needs to be a change to the way the aid is allocated to Lakewood that takes into account that Lakewood's school population is not as simple as the number of students who are enrolled in the public system, but there are obligations that the district has that reflect the greater school age population, not just the general public school population. Q In your opinion, what the SFRA says is

adequacy for Lakewood, is it adequate for Lakewood? A I don't think so because even just the special education costs alone are so wildly disproportionate to the actual needs of the students in the district, that there is no way that the district can continue funding its special education program at the levels that are required while receiving revenues that reflect a special education population that is drastically different than reality. (T1 DF 80-8 to 82-17).

The ultimate solution involved more than filling the deficit with an infusion of cash but will involve a change in how adequacy in Lakewood is calculated. A lot more is needed for a permanent solution. Mr. Shafter testified:

BY THE COURT: Q If you had more money, where would you put it in your budget? A Well, the first 12 and a Half Million Dollars would be used to cover this year's budget. (Laughs) Q To pay back the State basically. A Well not -- No, to fund -- just to fund this year's -- the budget as -- as it rolls forward. The additional funds would be used, you know, as a -- as a start with the transportation, health insurance. What were the other lines I talked about? The charter school tuition and that -- that one other line. And overall, I think -- I think we need to -- We, the District. I think the

District needs to build new facilities. Because it's not only -- Because there's just not enough facilities for the -- Especially in the Middle School. There's just -- There's too many students in that school. And - - And facilities, so that -- so that quality special education programs could be offered in the District. And in the long term, I think that would save money. It would be a big -- a big expenditure in the beginning but over the long term it would save money. And then -- And then the -- I think the -- You know, you would want to reduce class size. Which would be over and above what we're -- what we're spending now. I'm sure that there are foreign languages that used to be offered that are no longer offered for budgetary reasons. That's -- That's a start. (T2 DS 94-10 to 95-12).

B. FUNDING SPECIAL EDUCATION FUNDING AS A PERCENT OF PUBLIC SCHOOL ENROLLMENT FAILS IN LAKEWOOD BECAUSE THERE ARE MORE CHILDREN WITH DISABILITIES IN LAKEWOOD THAN THE ENTIRE PUBLIC SCHOOL POPULATION.

The calculation of adequacy for the base special education cost is flawed as applied to Lakewood. The formula's census count of 14.92% makes sense because the cost of every special education student opting for an FAPE in a typical district is offset by an increase in enrollment of about six regular education students entering the district. On the other hand, in the case of Lakewood's

31,000 nonpublic students, the special education cost is not offset because no regular education students at the same time will enter the district. The adequacy budget in Lakewood increases by only about 1/7 (14.92%) of the expense of each nonpublic student opting for FAPE in Lakewood. Another flaw is that not enough students are enrolled in the public schools to increase the adequacy budget enough to mitigate the costs of the most severely handicapped sent out of district.

The urban low-income districts average 120 enrolled students for each child sent to a private school for the disabled. Their numbers in the adequacy budget offsets not only the base cost, but more or less the extraordinary expenses of students sent to private schools for the disabled. Lakewood, by contrast, has only 20 enrolled students for each student sent to a private school for the disabled in 2017-18. By counting only the 6,000 enrolled public school students in the formula, Respondents ignore the fact that the pool of Lakewood students offered an FAPE is 37,000. Petitioners' school funding expert, Dr. Danielle Farrie explained:

[T]he SFRA uses a census based formula for funding special education. So whereas the at risk and LEP population and general education population are funded

on a per pupil basis, so whatever the enrollment of the district is, that's the funding that is calculated. The way that funding for special education students is funded differently, it's based on a census. So what they do is assume the average classification rate for each district. So it's not funded based on the actual number of students who are classified as special ed. It's the district is funded as if it had the average classification rate for the State, and so the average classification rate is applied to its resident enrollment number, which is the number of students who reside within the district enrolled in the public schools. (Testimony of Danille Farrie Ph.D., February 13, 2018, hereafter, T1 DF 22-11 to 23-1).

A So the Lakewood school system is very unique in that there are the school population is -- the public school population is not reflective of the school age population in the town, because there is a significant population of students who attend private schools. So in most districts you have some percentage of students who attend private schools, and the majority of students attend public schools, but in Lakewood, the majority of students attend private schools and the minority attend public schools. (T1 DF 38-3 to 12).

So again, because special education service[s] are provided to all school aged children, there are a large population of students in Lakewood who might otherwise utilize private schooling but who are eligible for special education services through the public school. So those students are essentially opting into the public education system at a higher rate than their non-special ed counterparts. Q Okay. A So that raises the classification rate in Lakewood, because there are more students in the public education system seeking special ed services than simply just the students who typically would attend public schools. Q And these students are coming from the non-public population. A Yes. Q Okay. Number 2, it says, "Lakewood has a higher than average number of students in the highest cost disability categories." What does that mean? A So I looked at the special education data created by the State, and they desegregate special ed students into different categories in terms of the services that they received, and what I find is that there are students who are classified in a certain number of classification labels, are considered higher cost, and I use the State's own sort of determination of what the high cost disabilities are, and Lakewood has a higher number of students in those high cost disability groups

than the typical district. (T1 DF 62-8 to 63-12).

State Monitor David Shafter complained that "because the District is also sending children who are enrolling from the non-public population, that percent of the non-public population is not considered when determining special education -- categorical special education aid."

Q Now, when -- when you send kids out of district, that tuition expense, are those public school kids? A They are public school students. Q So how -- how does the increase in the non-public population affect the -- affect special education? A I'm not an actuary. But actuarially, you know out of every -- every so many students, some of them are going to be special needs and some of them -- and some of them will be severely -- have severe special needs that will -- that will need a free and appropriate education. So what happens is, those students are enrolled as public school students. And then the Lakewood School District pays to send those students out of district. Now, in the State aid formula, again, there's -- I don't know the exact percentage. But there's a percentage that's used, based on the public school population, that this percentage of students will probably have, you know, off -- give or take, will need special education services. Whether

it be in-house, whether it be students sent to private schools for the handicapped, etcetera. But what happens is, because the District is also sending children who are enrolling from the non-public population, that percent of the non-public population is not considered when determining special education -- categorical special education aid. Q So how does this -- how does this cause the expenses to go up? A That's part of the reason why there is an Eight and a Half Million Dollar loan for the 16/17 school year. Because there was insufficient funds between the local taxes and State aid to pay for these expenses. (T2 DS 44-1 to 45-9).

Petitioners' funding expert, Dr. Farrie explained in her report:

There are three drivers behind Lakewood's high special education costs: 1) Lakewood has a large population of students who enroll in the district only because they are eligible for special education services. This dynamic raises the district's classification rate far above the state average used to calculate Lakewood's adequacy budget under the SFRA formula. 2) Lakewood has a higher than average number of students in the highest cost disability categories. 3) Lakewood places a higher than average number of students in out-of-district

placements.

Dr. Farrie explained how she reached her conclusions:

Q All right. And then what's number 3, "Lakewood places a higher than average number of students in out of district placements?" A So the State also produces tables that show where students are placed, the type of setting that they're placed in, whether they're in a general ed setting or whether they're in a separate school, and Lakewood has a much higher percentage of students in separate private schools for their special education program than the state avg. (T1 DF 64-4 to 13).

THE WITNESS: The question I had was how does the special education population in Lakewood public schools differ from the general education population. Why do we see such differences? Why is there such a large number of classified students. So one way to look at that was to compare the school aged population in the township as a whole, compare that racially, demographically as sort of the only things we have available, to the population of the public schools and then compare that to the special education population within the public schools, and what you can see is that the White students are drastically under-represented in the

overall Lakewood public school population, but and they're also under-represented in special education, but they are far more represented in the special ed population of the public schools. So the students who are in the public schools who are White are much more likely to be classified as special education than their counterparts. BY MR. LANG: Q What does that suggest? A It suggests that there is a group of students, White students who are opting into the public system in order to receive the special education services that they're entitled to. Q Now, when we went through that table over there, we talked about the tuition expense. All three of yours there, is that expense typical based on your research and what you've seen of your understanding of school finance? Are those expenses typical of a district of 6,000 students? A No. Those are high. That's reflected in table 34 and 4 where Lakewood has 19 percent of students aged 6 to 21 in separate schools compared to 7 percent statewide, and for the pre-school population 28 percent of the Lakewood students aged 3 to 5 are in separate schools - - sorry, classified students are in separate schools compared to 6 percent statewide. So Lakewood is placing a far higher number of students in private placements than the state average. Those private placements cost

more money, so it causes their special education costs to go up significantly. (T1 DF 66-17 to 68-8).

I mean White students has nothing to do with it other than this is the only way I can desegregate the groups. The White population of the public schools is 5 percent. If we expected that they were classified similar to the other -- with no other changes, if the White population of the public schools is 5 percent, you would expect the special ed population of the school to be somewhere around 5 percent, but because the special ed population of the school is 30 percent, it suggests that there is a different base of students that are being drawn into the public system beyond the typical public school student. (T1 DF 71-6 to 18).

A I'll just reiterate with special education that Lakewood has a disproportionate number of students with high cost disabilities, and also has a disproportionate number of students in high cost placements, which places a significant stress on the district because the special education funding defined through the formula is based on an expected population of an average classification rate with average disability classifications with average disability placements. So when Lakewood has a larger number of special education

students that are classified than the statewide average, it has more students who are classified with high cost disabilities, and therefore more student who are placed in high cost educational settings. The amount of funding or spending that Lakewood is required to make on the special education program drastically exceeds the amount of funding that the formula determines that the district needs to serve its students. Q Okay. And let's go to transportation. A So transportation is a similar situation in that Lakewood also has to provide transportation for both public and non-public students, and the district gets a per pupil amount for each student under the formula through categorical funding, but there is I guess then some attempts to alleviate the deficit and transportation costs. So Lakewood's transportation costs again far exceed what the formula provides for transportation funding, and in addition, the State isn't even funding the formula. THE COURT: But that's true for every district, isn't it? THE WITNESS: That is also true for every district, but I guess my greater point is that the costs for Lakewood far exceed even a fully funded SFRA. There was a pilot program that was initiated in '16-'17 where the non-public busing is now overseen by a transportation consortium. It requires like some buy

in for the district and then additional state aid as a reimbursement, per pupil reimbursement, but according to my calculations, the funding that the district received still doesn't capture the actual costs that the district is required to spend. So even if the formula were fully funded, the district is required to spend funds far in excess of what it receives to fund a transportation program in order to serve the students.

Q Are we on page 6 yet? A So now I would move to page

6. Q Okay. A So, you know, the point of SFRA is to provide a fundable [fungible] funding source for all districts to make their own decisions of where to put their money. So they get an adequacy budget, calculation, categorical aids to support their program, but it doesn't dictate exactly how that money should be spent, but there are a couple of areas where because of state and federal mandates the district has to spend money off the top of their budget. So special education and transportation are two of those areas. They can't decide that it does not want to transport students who live beyond the boundaries. It can't decide that -- Q Well, I'll ask what do you mean by "boundaries?" THE COURT: Let her finish, please. THE WITNESS: Well, the boundaries meaning that students need to be transported by public buses if they live beyond a certain distance

from the school they attend. Special education also is federally mandated. Students have to be placed in an appropriate program. There is no option to sort of short change these students. So that means that these two spending areas, the two areas in which Lakewood's costs far exceed what the formula provides, have to go out the door first, and what that means is that it leaves an enormous strain on the rest of the budget, so the rest of the budget being sort of the adequacy budget that is supposed to support the regular education program, programs for at risk students, programs for English language learners. Because the district is spending such a disproportionate amount of money on special ed and transportation, they are therefore spending far less money on the regular education program than what the formula suggests is adequate. So just to give an example of the impact that that has had on the district, I looked at classroom instructions, spending per pupil. Again, these are numbers from the Department of Education. It's from the Taxpayer's Guide to Education. So I looked at Lakewood's per pupil spending on classroom instruction between 2000 and 2016 and compared that to other similar districts. So the comparative spending guide groups districts into that are in similar circumstances

that could be expected to have similar spending patterns, and whereas in 2000 the instruction per pupil in Lakewood was pretty -- MR. LANG: Could I ask? THE COURT: Let her finish with an explanation of what she's saying. THE WITNESS: -- was pretty spot on with the state average. there has been an increasingly widening gap between the average, not the state average, I'm sorry, the average of other K to 12 districts with student populations above 3500 so that now Lakewood is spending about 50 percent less than those other districts. So they're spending about \$9,000 per student, and Lakewood is only spending \$6,600 per student on classroom instruction costs. BY MR. LANG: Q I just wanted to ask, but I think you already -- your paper answers to what are those comparable districts, and it says here the districts that are 3,000 -- well. Do you know off hand how many of those districts there are 3,500 plus students? (T1 DF 74-15 to 79-3).

The SFRA, an otherwise excellent school funding formula, did not anticipate the unique demography of Lakewood.

*Lakewood is sui generis.*

The SFRA, a weighted student funding formula, determines the cost of delivering the state's academic standards and equitably allocates state funding to allow districts to meet those standards. If properly

implemented, it is able to respond to the specific needs of school districts by calculating state funding based on overall enrollment with additional "weights" for at risk students, English language learners, and those with disabilities. However, the formula is incapable of addressing the extremely unique circumstances in Lakewood, an exceptional district where the majority of the community's children do not attend the public schools.

The Lakewood school district is in constant fiscal distress because the unique circumstances described above - the small proportion of school-aged children attending public schools, the resulting high rate of students with disabilities and of out-of-district placements, and the excessive transportation costs for public and non-public students - require Lakewood to spend a disproportionate amount of its available funding in those areas, reducing the amount that is available for general education and support services in the public schools. For a district that is already spending below its adequacy target under the SFRA, the impact on public school students is significant: Lakewood's stagnant instructional spending correlates with declining academic performance. Because this situation is both unique and persistent, changes are necessary to ensure

that public school students are receiving their constitutionally guaranteed right to a thorough and efficient education. (Conclusion of Petitioner's School Funding Expert, Dr. Danielle Farrie, Director of Research at the Education Law Center, Exhibit 8).

There needs to be a change in the way the SFRA operates in Lakewood so that its public school students receive their full share of adequacy as determined by the law.

Q You don't offer any kind of opinion on what types of changes are necessary? A I did not. Q So would you agree that if it were able, the population in Lakewood adopting a special question to fund transportation costs, that would be a change that would help address the problems in Lakewood, correct? A Well, I specifically was talking about changes to the formula. Q But you didn't -- your report didn't indicate that. You just indicated the changes, and so these are changes that would -- and you just testified that you didn't offer, you did not offer a suggestion on changes that would change them. A But my report was about how SFRA operates in the district, and my conclusion was that there need to be changes to the way SFRA operates in the district. A I don't. Q You don't offer any kind of opinion on what types of changes are necessary? A I did not. Q So would you agree that if it were able, the

population in Lakewood adopting a special question to fund transportation costs, that would be a change that would help address the problems in Lakewood, correct? A Well, I specifically was talking about changes to the formula. Q But you didn't -- your report didn't indicate that. You just indicated the changes, and so these are changes that would -- and you just testified that you didn't offer, you did not offer a suggestion on changes that would change them. A But my report was about how SFRA operates in the district, and my conclusion was that there need to be changes to the way SFRA operates in the district. (T1 DF 106-20 to 107-18).

It is unlikely a referendum will succeed in filling part of the deficit.

A But there's an overall fund deficit. Q If that were to be put to the voters, based on your past experience putting referendums up -- Could you comment on that? Would that be a solution? A No, it would not. We -- We've proposed separate questions to the Board. They've rejected them. In fact, since I've been there, they've rejected every budget. And the State Monitors, myself and David Shafter, had to approve it. But the Department and local leaders and State leaders, and everybody was saying -- you know, everybody was saying that any separate questions are not going to be passed, so don't

even bother holding the referendum and spending the money. (T2 MA 112-25 to 113-13).

The courtesy bussing referendum was overwhelmingly defeated after Mr. Azzara abolished courtesy bussing.

Q So since May of 2014, at any time, did you order the end of courtesy busing? A We -- Well, we put it out to referendum. Because it was -- When the bids came in we were -- we were about Eight Million Dollars over the estimate. So, we were going to cut courtesy in October, but we decided, and the Department decided, myself and the Commissioner, that the Township should have a referendum. Unfortunately, because of the amount of time you need to advertise for an referendum, and there's only four dates in a year that you could have a special election, we -- it took -- It wasn't until the end of January before we were able to go out to referendum. And it was about the end of February before the results were finalized. And it was defeated 98 percent to 2 percent, maybe even worse than that. But so then, we let the transportation finish with the year, and -- Q So -- A -- and let it go to deficit. And then the following year we were -- we were not going to provide courtesy busing. We just said, the monitors and the Department, we said it's off the table. (T2 MA 110-1 to 23)

What was the question on the referendum? A Whether the

voters wanted to pay an additional Eight Million Dollars in taxes to preserve courtesy busing. I think it was 6.2. We were asking them to approve 6.2. Q And that was rejected by 98 percent. Is that correct? A Yes. (T2 MA 111-15 to 23).

The SFRA formula needs to be modified as applied to Lakewood. State Monitor David testified that "there has to be a formula" the counts the nonpublic students.

BY THE COURT: Q Okay. So, how would you characterize the state of the Lakewood budget at present for this particular year? A It's a very tight budget. Q So when you say that, you mean there's no room for anymore cutting. A Correct. Q Okay. What would you suggest to improve the situation in Lakewood? A Increases of revenue. (T2 DS 91-17 to 92-2).

(COURT) Q How would you see State aid being increased? A Number one is full funding. Q That applies to all districts. A All districts. And number two, that -- And this would have to apply to all districts also. If somehow, come up with a formula that would -- Non-public school students receive services. Some of them are funded by Federal, some of them are funded by State, and some of them are funded locally. There has to be a formula. I would say a formula so that some portion of those students could be counted as a percentage, in

order to -- in planning the adequacy budget. And the local fair share would be deducted from that. And that would be an -- That would be what the State aid would be. (T2 DS 93-1 to 14).

"There has to be a formula." The formula should fund Lakewood special education based on a census, "some portion of those students could be counted as a percentage, in order to -- in planning the adequacy budget." Dr. Farrie testified:

[T]he SFRA uses a census based formula for funding special education. So whereas the at risk and LEP population and general education population are funded on a per pupil basis, so whatever the enrollment of the district is, that's the funding that is calculated. The way that funding for special education students is funded differently, it's based on a census. So what they do is assume the average classification rate for each district. So it's not funded based on the actual number of students who are classified as special ed. It's the district is funded as if it had the average classification rate for the State, and so the average classification rate is applied to its resident enrollment number, which is the number of students who reside within the district enrolled in the public schools. (T1 DF 22-11 to 23-1).

If a census is used in the adequacy budget, it should not

be 14.92% of public school enrollment, but 14.92% of the 37,000 resident K-12 children.

A So the way that the adequacy budget is calculated under SFRA, it's based on the district enrollment. So we look at the enrollment of general ed students and at risk students and English language learners, and the special education program, which we already talked about is funded on a census basis, is also based on a percentage of the students that are residents of the district, and -- Q Can I interrupt? A Mm-hmm. Q When you say, "resident of the district," you don't mean -- do you mean how many students actually live in Lakewood or as residents? A No. Sorry. Resident students who are enrolled in the district. Q In the public schools. A Right. Q Okay. A But the case in Lakewood is very different because there are mandated expenses in both special education and transportation that reflect the needs of the wider school aged population, not the resident enrollment population that attend the public schools. So the district is providing special education services for a much larger population than what the census percentage is calculated on in order to determine special education funding, and the district is required to transport students in both public and non-public settings, which is another additional strain on their

budget, again, a mandated expense that they cannot choose not to fund. T1 DF 59-4 to 60-9).

Petitioners presented the testimony of Dr. Ross Haber, who projected the total K-12 student population to increase to 43,806 in 2021-22.

The numbers shown in this report are self-evident. The historical growth of the nonpublic school enrollment along with the continued growth in the public school enrollment has made it impossible to adequately fund the schools through local sources. While the State has provided an infusion of loans to increase the annual budget a substantial gap remains between revenues and what is needed for a thorough and efficient education.

In my opinion, as an educator (having been a teacher and a school principal and as a consultant who has worked in well over 150 New Jersey School Districts, a change in the way the manner in which a District with the overwhelming non-public school enrollment is funded must be considered. (Conclusion of Petitioner's Demographic Expert, Dr. Ross Haber, Exhibit 1).

**Petitioners respectfully request** that the Commissioner of Education immediately recommend legislation modifying the SFRA so the full special education cost, rather than a census cost based on public school enrollment, is used in calculating the adequacy budget for K-12 3,500+ districts

with nonpublic populations greater than public school enrollment because the Commissioner "is charged with the overriding responsibility of seeing to it that the mandate for a thorough and efficient system of free public schools is being carried out." Board of Ed. of East Brunswick Tp. v. Township Council of East Brunswick Tp., 48 N.J. 94, 106 (N.J., 1966).

**In the alternative, Petitioners respectfully request** that the Commissioner of Education immediately recommend legislation modifying the SFRA so that the census cost is based on the total number of K-12 children residing in the district in calculating the adequacy budget for K-12 3,500+ districts with nonpublic populations greater than public school enrollment.

**Petitioners also respectfully request** that the Commissioner of Education provide **emergency relief** to fully fund Lakewood with SFRA transportation aid every year to minimize the impact of transporting a nonpublic population six times the size of the public enrollment on T & E until a long term solution is found by the legislature.

There were two different printouts that the State gives. You get a State aid printout that has your actual State aid. They also give out one called For Information Only. And that's really what it is. It's for -- It's what your

State aid would have been had the school funding formula been fully funded. But this is not the one where you're pulling your numbers from. That's why they mark it For Information Only. (T2 RF 165-23 to 166-6).

The Commissioner has the authority to authorize full funding as an interim measure until the legislature finds a solution in a similar way that the commissioner fully funded the Abbott districts because they had "status akin to that given to wards of the State." Abbott v. Burke (Abbott XXI), 206 N.J. 332,340(2011). Also see Jenkins v. Morris Township School District, 58 NJ 483 (1971).

Categorical aid or some kind of "carve out," so widely discussed in the media, is not the ultimate solution. The adequacy budget has to be modified in order to bear a rational relationship to the number of students and the services they receive.

POINT II. THE LEGAL RIGHT UNDERLYING  
PETITIONER'S CLAIM IS SETTLED.

The New Jersey Constitution entitles the children of this State to a "thorough and efficient education." *N.J. Const.* art. VIII, §4. To meet its constitutional duty, the School Finance Reform Act of 2008 (SFRA) "allocates state resources to school districts, while also requiring certain levels of funding at the local level."

Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140,  
152 (2009). The Adequacy Budget is

the core calculation of the money needed to provide T & E.

"SFRA identifies a base cost associated with the education of an elementary pupil without any particular special needs. Once identified, the per-

pupil amount is increased to reflect characteristics that are widely accepted as increasing the cost of education. Those characteristics are: 1) grade level, and whether the pupil is 2) an at-risk pupil (defined as one eligible for a free- or reduced- price lunch), 3) a Limited English Proficiency (LEP) pupil, or 4) a special education student of mild, moderate, or severe classification." Id. at 152.

The grade level multipliers are provided by N.J.S.A 18A:7F-

50. The at-risk and LEP multipliers are provided by  
N.J.S.A 18A:7F-51.

The State share in the Adequacy Budget is referred to as Equalization Aid provided by N.J.S.A 18A:7F-52 and  
N.J.S.A 18A:7F-53.

"Equalization Aid is State-provided aid to support the Adequacy Budget by funding the difference between a district's Local Fair Share (LFS) and its Adequacy Budget. A district's LFS is the amount it is required to contribute in support of the Adequacy Budget. That amount is determined by adding a district's equalized property wealth and its equalized income wealth. Under SFRA, a district must provide the lesser of either its LFS, as calculated using SFRA's formula, or the local share it raised in the previous year. In short, Equalization Aid is the difference between a district's LFS and its Adequacy Budget." Id. at 155.

The local fair share is the same no matter how great the adequacy budget.

Q Okay. Does it make a difference in how big the adequacy budget is? If it's a Hundred Million, Two Hundred Million; does that affect the local fair share?

A The local fair share is always the same because it's based on the equalized valuation and the incomes. So, no, the adequacy budget does not -- has nothing to do with the local fair share. (T2 DF 66-16 to 22).

The SFRA also provides districts with additional aid known as Categorical Aid.

"Categorical Aid is a separate funding stream provided on a per-pupil basis for certain expenses. Categorical Aid covers: (1) one-third of census-based costs for special education; (2) security; (3) preschool aid; (4) extraordinary aid for special education; and (5) various additional aid categories." Id. at 155.

Categorical and extraordinary special education aid is provided by N.J.S.A 18A:7F-55; security aid by N.J.S.A 18A:7F- 56; and preschool aid by N.J.S.A 18A:7F-54. The various additional aid categories the "formula also provides for [are] transportation aid, choice aid, and debt service on the basis of per-pupil categorical aid factors." Id. at 155. (N.J.S.A 18A:7F-57, N.J.S.A 18A:7F-62 and N.J.S.A 18A:7G-9

respectively.)

One-third of the SFRA expense to educate each special education child is funded as Categorical Aid. It is not part of the SFRA Adequacy Budget and therefore not subject to the deduction of the Local Fair Share in determining equalization aid. Nonetheless, it is important to include this expense in determining the cost of T & E. "To determine whether a district is over or under adequacy, the DOE compares the sum of a district's adequacy budget plus Special Education Categorical Aid and Security Aid to the district's spending in the current year." Abbott v. Burke (Abbott XXI), 206 N.J. 332, 433 ft. nt. 35 (N.J., 2011).

The problem is that the amount of money available to public school students is only about 40% of what the SFRA deems adequate. Dr. Daniell Farrie, Petitioners' school funding expert, testified:

THE WITNESS: I mean what I can say is that using Lakewood's current expenditures as a guide, they are spending somewhere around \$40 million in excess of what the formula provides for both special education and transportation, and because as I said those are mandates that can't be changed, that \$40 million has to come from elsewhere, and the only elsewhere is the funding for the regular education program and for the

supplemental services for average students, English language learners. So that's \$40 million off of the, you know, 120 around say adequacy budget. So that is a very significant shortfall in terms of the amount of funding that is left for the regular education program after those mandated special ed and transportation costs are accounted for. (T1 DF 86-3 to 18).

A. RESPONDENTS CALCULATE THE ADEQUACY BUDGET IN LAKEWOOD AS \$117 MILLION BASED ON THE NUMBER OF CHILDREN ENROLLED IN THE PUBLIC SCHOOLS.

Respondents calculated the Adequacy as Defined for the Lakewood School District in 2018 as \$117,325,784. Adequacy as Defined,

includes the base cost for regular students, the additional cost for at risk and LEP and combination students and the special education part of the adequacy budget, and then it also adds the categorical special education and the categorical security aid. So that is what is often referred to as the "adequacy as defined" number. So it's the adequacy budget plus the additional funding for the special education outside of the adequacy budget and the security aid that's outside of the adequacy budget. (T1 DF 32-15 to 33-14).

The calculation of adequacy in Lakewood is based on the number of children attending the public schools. It does

not take account of the number of nonpublic school children served by the district.

A Lakewood has -- has a unique student population. Q Can you explain that? A In most districts, your -- your public school population is -- is the greater of the -- Between public school and non-public school, your public school population is the greater of the two. For example, in -- in the City of Camden, there are, you know, thousands of -- I think at the time when I was there, it was about 13, 14 thousand public school students, and we sent -- And the non-public population was a very small percentage of that. East Windsor Regional, the non-public population was very small. There was -- There were maybe two non-public schools. One was located right -- right in East Windsor Township. And another was -- was located just outside the Township, that -- that the school had to provide non-public services for. In Lakewood, you have a public school population of about 6,000 students and a non-public population of about 30,000 students. And -- And that's what makes Lakewood unique from any other district that I have worked in. Q And what kind of challenges does that cause you as a fiscal -- as the fiscal monitor? A The challenge is -- is that, in my previous districts, when you -- when you raise your

taxes, you would have your -- you would have your -- your adjustment based on population. You could do that if your population was growing. And it was enough to have a pub -- the increase for the public school, the increase for with the cap, whatever that at the time, and that always changes throughout the years. And State aid would also be increasing. What's happened in my final years of Camden, and then when I came to Lakewood is that, what happens is that the Lakewood public school population stays relatively the same. In one year there was an estimate that -- that it would increase more than a percentage, which would allow for a growth adjustment. But it was just for the one year and it was a very small adjustment. Where the non-public population has been increasing about ten percent a year. In a district where your non-public population is the smaller of the two percentages, your -- your taxes and your increase in State aid are sufficient to cover the costs that have to be paid now for the non- public population. Now, for example, -- you do get categorical aid, which includes transportation, aid in lieu, and transportation of your non-public students. But even - - even -- The way the formula's supposed to work, you get your categorical aid. Then you use some of your

equalization aid. And then you use some of your tax money. And that's how the students are transported. But when your categorical aid is frozen, and when your equalization aid is frozen, and your tax rate can only go up two percent, and you have a non-public population that's increasing, then the only place that's -- that's left to take the money from, is from the public school students. Q Now you mentioned, the only places to take from the public school students. Does Lakewood staffing -- Is it above the State levels or below, from your knowledge? A Well, the State has a model. For example, I think it's grades K-2 is 21. Grades 2 through 8 is 22 students. And Grade 9 through 12, 23 students, as the student teacher ratio. And Lakewood student teacher ratio, there's much -- the students per teacher is much higher than those in the model. I think in the Middle School it's about 28, 29, as opposed to 23. The High School, I'm not too sure about. Elementary School, the last time I looked at it, it was about 24 -- You know, a few students higher per teacher. Q And what about administrators. Does Lakewood have less or more of them than the State model? A Less -- They have less than the State model. (T2 DS 37-16 to 40-15).

The SFRA makes no provision for counting nonpublic school

students in determining adequacy. This causes a problem in revenue not spending. David Shafter:

Q Okay. And so, does Lakewood have a spending problem?

A I don't think so. (T2 DS 32-23 to 25).

B. Students in low-income urban districts require more funding than higher income or suburban districts.

Lakewood students face all the challenges, if not more, than students in low-income urban districts. The Abbott II Court made clear that student coming from low-income urban districts require more resources to even the playing field.

"[W]e conclude that a significant number of poorer urban districts do not provide a thorough and efficient education for their students; that the measurement of the constitutional requirement must account for the needs of the students; that in most poorer urban districts, the education needed to equip the students for their roles as citizens and workers exceeds that needed by students in more affluent districts; that the education provided depends to a significant extent on the money spent for it, and on what that money can buy-- in quality and quantity--and the ability to innovate." Abbott by Abbott v. Burke, 119 N.J.

287, 319 (N.J., 1990)

Student in lower income districts require more funding for increased resources than students in the average New Jersey district.

“If the educational fare of the seriously disadvantaged student is the same as the ‘regular education’ given to the advantaged student, those serious disadvantages will not be addressed, and students in the poorer urban districts will simply not be able to compete.”

Id. at 374

The SFRA extends the reasoning of the Abbott Court to all New Jersey districts by providing increased funding in each district for every at-risk or low-income student and for every LEP student in its calculation of adequacy.

“For each at-risk pupil, a base at-risk weight of .47 is applied. Also, as described by the Special Master, the [State Department of Education (DOE)] employed a sliding scale to recognize the additional challenges faced by districts with high concentrations of at-risk students. The sliding scale applies a base at-risk weight of .47 to the base student cost for at-risk pupils in districts with an at-risk student population

between zero and 20%. The weight then increases incrementally. The scale levels off at 60%—applying a weight of .57 to at-risk pupils in districts with an at-risk population over 60%. Although the at-risk weight levels off, the districts will still receive the additional funding for each at-risk student; therefore, the formula does provide more funding to districts with higher concentrations of at-risk students. The formula applies weights also to LEP students (although the PJP panel suggested .47, SFRA applies a weight of .50) and yet another weight for students who are both at-risk and LEP to support non-duplicative resources required by such students (although calculated during the PJP process to be 22.6% of the LEP weight, SFRA uses 25%).” 199 N.J. at 154.

The weights for at-risk and LEP funding of children counted in the adequacy budget for Lakewood is washed out by the costs of serving the children that Respondents do not count. The SFRA as applied to Lakewood is unconstitutional.

POINT III. THE PETITIONERS HAVE A LIKELIHOOD OF PREVAILING ON THE MERITS OF THE UNDERLYING CLAIM.

Lakewood is underfunded by 35% to 40%. "[T]he district only has 60-65% of the state and local revenue that the SFRA deems necessary for students to achieve the state's curriculum standards." Certification of Dr. Danielle Farrie.

The results of years of underfunding has devastated the schools. The district does not have in-house curriculum supervisors, closed down its industrial arts program, decimated its rich curriculum and has oversized classes.

The Taxpayers' Guide to Educational Spending in Exhibit 17, at first blush, seems to show that Lakewood is spending substantially more on its students than other districts. The total spending per pupil is \$26,649, higher than most other urban districts and the state average of \$20,219. This notion, however, is dispelled by the 2016-17 Budgeted Costs Amount Per Pupil, which in Lakewood is \$13,236, while the state average is \$15,575. Then, when one locates the true amount that reaches the student Petitioners, classroom spending, a different story is told. Total Classroom Instruction Cost Per Pupil in Lakewood is \$7,412. The state average is \$9,218. As mentioned, 87.93% (FY 2015), 90.96% (FY2016), 86.99% (FY 2017) and 75.06% (FY 2018) of Lakewood students are classified as at-risk or low-income. Districts surrounding Lakewood in all four directions, each with substantially less than 40% of students at-risk (1:8), spend at least 16% more per pupil: Brick \$9,017, Howell \$10,089,

Jackson \$7,989, and Toms River Regional \$7,899..

Classroom supplies are among the lowest in the state. Legal expense per pupil, due to litigation over IEPs, hence the large number of children sent to schools for the handicapped, is among the highest in the state. Teacher pay is the lowest.

The irrational funding of Lakewood has led to such dismal underachievement and failure to prepare students for post-secondary education that constitutional standard of providing T & E cannot possible have been met. The evidence before this Court of lack of funding in Lakewood and the resulting underachievement all point to the conclusion that Respondents have failed to provide the constitutionally required system of thorough and efficient public schools in Lakewood.

A. THE CALCULATION OF THE COST OF EDUCATIONAL ADEQUACY IN LAKEWOOD NECESSARY FOR THE SYSTEM OF FREE PUBLIC SCHOOLS FAILS TO REFLECT ACTUAL MANDATED EXPENSES OF A BASE POPULATION FIVE TIMES THE NUMBER OF CHILDREN COUNTED IN THE CALCULATION OF ADEQUACY THEREBY DEPRIVING THE CHILDREN OF LAKEWOOD THEIR CONSTITUTIONAL RIGHT TO A THOROUGH AND EFFICIENT EDUCATION.

About 6,000 students attend Lakewood Public Schools. Adequacy is calculated for Lakewood solely using the number of students enrolled in the public schools even though 37,000 K-12 students attend schools in Lakewood and are eligible for district services. All 37,000 children are

entitled to evaluation and a Free and Appropriate Public Education should they have special needs under the child find provisions of the Individuals with Disabilities Education Act of 2004. "All children with disabilities residing in the State, including . . . children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated. . . ." 20 U.S. Code § 1412. All 37,000 children, including nonpublic students, are entitled to remote transportation if they live 2 miles away from their elementary school and 2 ½ miles away from their secondary school consistent with N.J.S.A. 18A:39-1.

The Lakewood School District is mandated to provide 21,510 students with remote transportation (Exhibit 19, column TRN\_EREK). The projected 2018-19 cost of Transportation will be \$33,078,756. This is 28% of the \$117 million adequacy budget. Clearly there is no rational relationship between the adequacy budget and actually expenses in Lakewood.

The disproportionately high expense for a district of only 6,000 children is due to the unique demography of Lakewood in which less than one-sixth of the 37,000 resident K-12 children attend the public schools. Had the SFRA

included all 37,000 children in its calculation of adequacy, the expense would have been much less disproportionate. Paterson, with 27,969 students enrolled in the public schools, spends \$19,936,753 on transporting regular education children (Exhibit 35). The adequacy budget of Paterson is \$ \$578,028,745 (Exhibit 19, column STA\_NEWBUD). The cost of transportation is only 3.4%.

An even larger deduction out of the budget comes from providing a Free and Appropriate Education to children with extraordinary needs in the base population of 37,000 children. Many school districts are not equipped with the facilities necessary to handle their most severely handicapped resident children. The cost often runs into the millions. For example, Patterson, with 27,969 children, sends 229 students to schools for children with special needs (Exhibit 19, ENC\_PSH). Lakewood, with over 37,000 children, sends 296 students to schools for the handicapped. The drain on the budget is projected at \$35,908,287 out of an adequacy budget of \$117,325,784 or 30.6% of adequacy. The cost of transportation and tuition together is \$68,987,043. This is 60% of the Lakewood adequacy budget. Clearly the adequacy budget has to be changed. Mike Azzara, the lead state monitor in Lakewood appointed in 2014, testified on February 22, 2018.

THE COURT: Wait. What's the problem with the budget?  
How's that? THE WITNESS: There are -- The funding for annual has been frozen for almost eight years. And the population in the town, the school age population, particularly the non-public schools, they put a lot of stress on the District's budget. The special education, in particular, the District is responsible for providing spending special education services for every school age child -- I believe it -- I think it's up to 21. -- every school age child in Lakewood regardless of whether they would have went into a non- public school or the public school. So actually the universe that they're responsible for, for special education, is at 35-36,000 children. Not just the 6,000 in the School District. Now the funding formula uses a census method. And basically the State average classification rate, which is around 15 percent, times the school district enrollment. So they only get funded for like 15 percent of 6,000 students. When actually the universe that makes up what they're responsible to provide those services for, includes the non-public -- I would say it includes the non-public enrollment. Because we have many orthodox students who are in private schools for the handi -- for the disabled. And they're considered public school students because they're special ed. But

if they hadn't been classified, they would have went to the Yeshiva. BY MR. LANG: Q If they hadn't been classified they would have what? I didn't hear that. I'm sorry. A The orthodox students as a -- pretty much as a rule, go to the yeshiva's. They don't come to the public school system. So if any of the orthodox children have learning disabilities or need special education, the District is responsible for providing it. (Testimony of Michael Azzara, T2 MA 120-24 to 122-1).

The SFRA does not contemplate expenses of such magnitude and their effect on T & E in Lakewood because it *fails to count all the children* in its adequacy formula. Certainly many districts suffer insufficient state aid for transportation and extraordinary special education expenses but the deficiency in those districts is offset by a proportional and commensurate regular public school student count in the T & E budget.

Lakewood, by contrast, serves a base of 37,000 resident children while its SFRA student count is 6,000. Each new special education student entering the district is no offset by 6 regular education student as in other districts.

THE WITNESS: I think there's insufficient revenues to cover the required expenditures. Which is why we have

advanced State aid. Which is why the District has advanced State aid, or otherwise known as loans, commonly known as loans, to make up the shortfall. BY MR. LANG: Q You said Lakewood does not have a spending problem. Could you explain that? A I go over that budget with a fine tooth comb. 16/17, 17/18. And I made sure that that budget was appropriate. Looked at -- Would look at historical data. Look at the projections, or the number of students that were -- that were going to be placed in private schools. Looked at the projections of the growth of the -- of the non-public population, in order to look at -- for transportation services. So, as far as on the expenditure side, I know that's not an issue. Since I -- Before I got to the District, when they -- when the District would look at special education students. They would say, We have no place in the District so we have to send them out. Since we got there, I -- I gave the a blanket statement last year. "If you ever need a teacher, just because there's no money in that line item to start a class, rather than sending students out-of-district, we hire the teacher. We hire the paraprofessional." And since that time, the -- the District has opened a number of in-house special education classrooms. (T2 DS 33-4 to 34-7).

## B. LAKEWOOD IS A LOW-INCOME URBAN DISTRICT

Lakewood is a low-income urban district and is recognized by Respondents as a peer of the Abbott districts for the purpose of comparison in Respondents' school report cards. In 2014, one hundred forty seven schools from almost every Abbott district were listed as peers of Lakewood schools. Only four non-Abbott DFG A or B schools were listed as peers of any Lakewood school. Lakewood is compared to the Abbott districts. Similarly, Exhibit 16 lists the failing schools, the focus and priority schools. Lakewood High School and Lakewood Middle School, along with two Lakewood elementary schools, are listed together with the overwhelmingly urban low-income districts.

I was in all three State operated systems; Jersey City, Newark and Patterson. And then, after that term, I went to Patterson alone as an assistant superintendent. That was my only district I was working at. BY MR. LANG: Q You didn't do that as working for the State? A It's a State-Operated district, but it's considered -- It's not considered operated by -- The Commissioner doesn't operate it, put it that way. Q Okay. A The Superintendent does. Q So does Lakewood have anything in common, in terms of poverty or any -- any characteristics in common with those three districts? A They're all -- They're all by regulation considered at-

risk districts. Q Including Lakewood. A Including Lakewood. Yes. In fact, Lakewood has at least three priority schools and a focus school, which means they're failing schools. And they have the State Department of Education's Regional Achievement Center is assigned to work with those schools because of the failing. Q Are there any other schools in Ocean County that are priority or focus schools? A Not that I can recall. Q The majority of the priority and four focus schools, how would you characterize those districts? A Inner city poverty districts. Asbury Park is one. Neptune, Kingsburg, Newark, Jersey City, Camden. They're all -- They were all in the Abbott Districts. Q And Lakewood's considered -- A Not -- Q -- grouped together with them. A Lakewood is not an Abbott District. Q Lakewood's not an Abbott. But it has the same characteristics as -- as those districts. Does it? A I -- I would say so. Yeah. MR. STARK: Objection. THE COURT: Well, does it? MR. LANG: Does it? THE COURT: Does it share some of -- THE WITNESS: Yes. In terms of the number of kids that are qualified for free and reduced lunch. As far as the number of children that the regulation considers to be in poverty to make it an at-risk district. It's the same criteria for everybody now. (T2 MA 114-2 to 115-24).

The 2010 Census counted 92,843 in Lakewood. Lakewood births have risen over the last twenty years with 4,464 births in 2015 compared 4,245 in Newark. (Exhibit 22, P:8). The median age in Lakewood is 21.3. The median age in New Jersey is 39.5. (Exhibit 23, P:39). It is unlikely that the census estimate of 100,758 is accurate given that 92,843 was the actual count in 2010, about 4,000 children were born each year and the median age is 21.3. Lakewood likely has a population of 125,000. (Certification of Mr. Henshaw). Lakewood has a labor force of only 30,739 to support a population of approximately 125,000.

Lakewood Census Designated Place (CDP) is the area where most K-12 students live. (Exhibit 21, P:19). Lakewood CDP has the highest percentage of persons in poverty and Lakewood Township is the fourth highest of all urban low-income districts. Lakewood's per capita income is ranked 555 out of 564 New Jersey municipalities.

The households making up the Lakewood tax base are already burdened with the cost of sending 31,000 students to nonpublic schools and overburdened to support a population four times its labor force. The tax base cannot possibly be more burdened than its local fair share. The population of Lakewood is estimated now at is more than twice the median population of the urban low-income districts.

The population density of Lakewood Census Designated Place (CDP), the area in which almost all public and nonpublic students live, according to the 2010 Census is 7,602 per square mile, about seven times the state average but slightly less than the urban low-income median. The percent of the population 17 and under in Lakewood CDP is 48.4% compared to the urban low-income average of 24.4% (Exhibit 35). The 2016 Lakewood labor force of 29,443 is only 30.5% of the 2016 estimated 100,758 people whereas the labor force of the average urban low-income district is 45.8% and of New Jersey is 50.9%. Only 30 working people provide for the shelter and sustenance of every 100 people, or 125 according to other estimates, in Lakewood. Estimated 2016 per capita income in Lakewood is \$15,443. The average urban low-income district per capita income is \$24,199. Per capita income in the state as whole is \$37,538. This means that Lakewood per capita income is just 41.1% of the state average. In the Abbott administrative decision, Judge Lefelt found that the "plaintiffs' districts have per capita income that ranges from 49% to 81% of the State average per capita income, and urban aid cities have, on average, 72% of the State average." Abbott v. Burke, EDU5581-85 (initial decision), August 24, 1988 at 265. The per capita income of Lakewood CDP is \$12,275, or 32.7% of the State average. The median family income for Lakewood CDP in the last census was

\$38,493 compared to \$50,995 in the urban low-income districts and \$114,265 statewide. The average family size in Lakewood CDP is 5.23. The average Abbott district family size is 3.33. Hence, \$38,493 supports the average family of 5.23 members. 90.6% of Lakewood public school students in 2016, the last accurate count, were classified as low-income whereas the average of the Abbott districts was 76.0%. (Exhibit 19). 1,575 or 24% of Lakewood public school students are classified as Limited English Proficiency compared to the 10.0% average urban low-income districts. 85.9% of 2015 Lakewood public school students are Hispanic and 8.2% are African-American (Exhibit 32 at 8). In the urban low-income districts many minority children come to school with disadvantages far beyond their white counterparts. "Indeed, the term 'urban schools' has become a euphemism for minority schools. . . . [T]he urban public school population often contains a higher minority percentage than is present in the surrounding municipality." Lefelt at 26-27. The evidence shows that Lakewood is in fact a low-income urban district.

C. LAKEWOOD IS FUNDED SUBSTANTIALLY LOWER THAN EVERY LOW-INCOME URBAN DISTRICT.

The additional SFRA funding necessary to remedy the disadvantages of low-income and Limited English Proficiency in each district is swallowed up in Lakewood by

the expense of serving a K-12 resident population in which only 16% attend public schools. This drain on the budget has drastically harmed public school students in Lakewood. As mentioned, 90.6% of Lakewood students are classified were at-risk or low-income, more than the 76.0% average of the Abbott districts and the 28.5% average of all New Jersey districts. 24% of Lakewood students are Limited English Proficiency, more than the 10.0% average of the urban low-income districts and the 2.0% average of all New Jersey districts.

The evidence also shows that the 2016-17 Budgetary Comparative Per Pupil Cost in Lakewood is \$13,236, whereas the average of all New Jersey districts is \$15,714 and the Urban low-income average is \$17,908 (Exhibit 17). The 2016-17 Total Classroom Instruction Cost Per Pupil in Lakewood is \$7,412. The average of the Abbott districts is \$10,296 (Id.). Districts surrounding Lakewood in all four directions, suburban DEFG districts, each with substantially less than 40% of students at-risk (1:8), spend at least 16% more per pupil: Brick \$9,017, Howell \$10,089, Jackson \$8,517, and Toms River Regional \$7,899.

This level of funding is unacceptable. Without any other criteria to show compliance with the constitutional mandate, the Supreme Court in Robinson noted, "The trial court found the constitutional demand had not been met and

did so on the basis of discrepancies in dollar input per pupil. We agree." Robinson v. Cahill, 62 N.J. 473, 515 (N.J., 1973).

The Court need not rely solely on the evidence of low funding. Respondents own criteria: standardized test scores, enrollment in post-secondary education, graduation rates, teacher salary and experience, classroom supplies, SAT scores, all evidence compiled by Respondents, show that the deprivation is on a constitutional scale.

D. RESPONDENTS FAIL TO PROVIDE THE CHILDREN OF LAKEWOOD WITH A THOROUGH AND EFFICIENT EDUCATION BECAUSE LAKEWOOD IS A LOW-INCOME URBAN DISTRICT, STUDENTS IN LOW-INCOME URBAN DISRICTS REQUIRE MORE FUNDING THAN STUDENTS IN HIGHER INCOME OR SUBURBAN DISTRICTS, AND LAKEWOOD IS FUNDED SIGNIFICANTLY LESS THAN LOW-INCOME URBAN DISTRICTS OR SUBURBAN DISTRICTS RESULTING IN UNACCEPTABLY LOW STUDENT ACHIEVEMENT

The students of Lakewood, living one of the largest municipalities in New Jersey and one of the lowest-income have all the needs and all the disadvantages of other low-income urban areas. Students in low-income districts require more funding for increased resources than students in the average New Jersey district. "If the educational fare of the seriously disadvantaged student is the same as the 'regular education' given to the advantaged student, those serious disadvantages will not be addressed, and students in the poorer urban districts will simply not be able to compete."

Abbott by Abbott v. Burke, 119 N.J. 287, 374 (N.J., 1990).

59. Lakewood salary has the lowest median salary of all 103 large K-12 districts with 3,500 or more students. a) Median Teacher Salary (2016-17): \$52,046; Salary Ranking Within Group (2016-17): 1|101; Median Teacher Salary (2015-16): \$50,436, Salary Ranking Within Group (2015-16): 1|103.

(Exhibit 17). The average urban low-income median salary is \$67,249 and the average large district overall is \$67,113.

The average teacher experience in Lakewood is 8.3 years compared with the 11.8 median of all districts in its category. (Id.). Lakewood spends \$153 per pupil for classroom supplies per student whereas the average Abbott district spends \$315 and the statewide average is \$330 (Id.).

60. The dismally low amount of spending for Lakewood's disadvantaged students has led to such dismal underachievement and failure to prepare students for post-secondary education that the constitutional standard of providing T & E cannot possibly have been met. The High School Proficiency Assessment (HSPA) Language Arts scores for Lakewood from 2008-2014 were lower than the average and median scores of the urban low-income districts and significantly lower than the state average. (Exhibit30). The HSPA Mathematics scores for Lakewood were about half the

points of the state average and more than ten points lower than the average and median Abbott districts every year since 2009 (Id.). The Grade 8 GEPA and NJ ASK Language Arts scores for Lakewood was below the average and median score for the Abbott districts every year since 2004. (Id.). The Grade 8 GEPA and NJ ASK Mathematics scores for Lakewood students were below the average and median scores for the Abbott districts every year since 2006 (Id.). The Adjusted Cohort Graduation Rate was at or below the average (mean) and the median of the urban low-income districts for the last four years (Exhibit 31). SAT scores reported on 2016-17 School Performance Report, Reading and Writing score for Lakewood 448, state 551. (Exhibit 18 at 15). SAT scores reported on 2016-17 School Performance Report, SAT - Math Lakewood 452, State 552. (Id. at 15). Only 44.5% Lakewood students are in post-secondary education 16 months after graduation whereas the state average is 76.1% (Id. at 22).

The evidence of lack of funding in Lakewood and the resulting underachievement all point to the conclusion that Respondents have failed to provide the constitutional required system of thorough and efficient public schools in Lakewood.

We therefore adhere to the conventional wisdom that money is one of the many factors that counts. Staff ratios, breadth of course offerings, teacher experience and qualifications, and availability of equipment make

a real difference in educational opportunity. We do not mean that money guarantees a thorough and efficient education, nor that, given the approach recommended by the Commissioner, a lower spending district with an effective schools program will not do better than a higher spending district without it. All we mean is that if 'effective schools' is a desirable approach, it should be superimposed on a structure that starts out equal." Abbott by Abbott v. Burke (Abbott II), 119 N.J. 287, 381 (N.J., 1990)

POINT IV. WHEN THE EQUITIES AND INTERESTS OF THE PARTIES ARE BALANCED, THE PETITIONER WILL SUFFER GREATER HARM THAN THE RESPONDENT WILL SUFFER IF THE REQUESTED RELIEF IS NOT GRANTED.

Education is priceless. No amount of money can replace the irreparable harm to Petitioners should relief not be granted. The loss of experienced teachers and the larger class sizes will cause irreparable damage to the district's students. These students have only one chance to get a high school education. If the state fails to provide them with a thorough and efficient education, they either will drop out of school, or graduate below the necessary standard. Irreparable damage will also result if another year passes under an arbitrary and capricious adequacy budget in Lakewood.

On the other hand, the State is obligated by the constitution to provide a system of thorough and efficient public schools. There can be no harm to the State in filling its statutory and constitutional duty. The State has ignored the pleas of Lakewood public school students for a decade. It assumed that Lakewood had wealth because

the ratio of property value to the number of students was higher than other urban districts. It removed Lakewood from the DFG rating. "[A] school district will not have a DFG classification if more than half of the school-aged children in the community attend nonpublic schools. Both limitations were also used in the 1990 DFG analysis."

<http://www.nj.gov/education/finance/rda/dfg.shtml>

Q Any -- Do you have any idea why Lakewood never became an Abbott District? A Well, the court had a very narrow -- came up with a very narrow definition. And it was District Factor Group A and B Districts. And then they put in there like a circuit breaker, if your taxes were so much per pupil. (T2 MA 116-16 to 22).

The state ignored the fact that the same families living on the taxable properties in Lakewood forming the tax base have to support an additional 31,000 children. The state ignored that the town is one of the lowest income in the state. And most pertinent to the issue at bar, by ignoring the existence of the 31,000, the State failed to account for a drain on the public schools that now consumes 60% of its budget. The equities clearly balance on the side of the kids.

A. THE TAX BASE OF LAKEWOOD DOES NOT HAVE THE CAPACITY TO FILL THE DEFICIENCY IN ITS ADEQUACY BUDGET.

The adequacy budget is paid by both the state and by local taxpayers. The state share, known as equalization aid, is the difference between the adequacy budget and the local share (N.J.S.A 18A:7F-52).

Q Okay. Now, concerning the local fair share, how is that determined? A There is a complicated formula that determines the level of funding that each municipality can afford based on income, personal income values and the equalized valuation of property in the town. (T1 DF 18-11 to 16).

The statute provides that half of the local share is determined by multiplying the aggregate income of the residents of a district by the Statewide income rate (0.047823491) and the other half of the local share is determined by multiplying equalized property value by the Statewide property value rate (0.014008725). Property wealth and income are thereby reflected in equalization aid because they determine the size of local share, which is deducted from the adequacy budget to determine the state share.

Q [T]he discussion over the wealth of the district is irrelevant as far as it's just right here in the

calculation of local fair share. A I mean that is the purpose of local fair share, is to determine how much the school should be supporting through its own local revenues. (T1 DF 29-16 to 21).

The Lakewood tax base, the ninth lowest in per capita income in the State, spends \$179,086,426, 11.02% of its aggregate income of \$1,625,147,547 municipal, school and county taxes. (Exhibit 34). The average in the urban low-income districts, noted for their overburden of excess municipal expenses, is 10.35%. The Statewide average is about 9%.<sup>9</sup>

The traditional depiction of municipal overburden made much ado about the higher school, municipal and county taxes in the low-income urban areas. These taxes already consume a larger percent of income in Lakewood than in the Abbott and surrounding districts. Yet taxes only account for about half of the burden of families making up the Lakewood tax base. The financial strain of sending over 31,000 children to nonpublic schools, of course, falls solely on Lakewood families. Together with municipal, school and county taxes, approximately one-quarter of all income in the tax base is consumed.

Q You spent -- You spent substantial amount of time in the Department of Finance. You spent a substantial

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<sup>9</sup><https://www.app.com/story/news/investigations/data/2017/08/03/new-jersey-property-tax-percent-income/528684001/>

amount of time in the Abbott Districts. Is that correct? A That's correct. Q You are familiar -- Are you familiar with the difficulty involved in raising taxes in those districts? A Yes. Q Is that what you call municipal overburden? A Well, that's what -- The court came up with that term. Q Okay. A You'd have to take a look at the various combined local and munic -- school and municipal tax rates. Okay. To see which districts really are overburdened on their taxes. Q Okay. So now I could ask the question I think. Is Lakewood -- Does Lakewood share those same characteristics as you've seen as being overburdened? A It's -- MR. STARK: Objection. I do not think there's a foundation laid here. THE COURT: I'm just going to let him answer the question. MR. STARK: Okay. Thank you, Your Honor. MR. LANG: You can answer the question. THE COURT: You can answer the question, Mr. Azzara. THE WITNESS: In my opinion, okay, the tax base is spread out over many more people than the people who send their children to the public school. And it's -- it's definitely something that you would have to take a look at if you wanted to determine if the tax base was strained. And it definitely produces municipal cost that wouldn't be there if it was only the -- the families or the loc -- you know, the

families of the non-orthodox population. BY MR. LANG:

Q So, if I get you correct, there - Lakewood does have costs that you don't have in a district that doesn't have such a high non-public population. A Exactly.

Considering that only one worker provides for every four residents, considering that 41.8% of the entire population in the tax base is 17 and under, and considering that the median family income is among the lowest in the state, the municipal overburden on Lakewood taxpayers is beyond the pale. Local taxpayers do not have, and have not had, the capacity to prevent the expenses of transportation and special education services from draining programs, staff and curriculum out of the public schools over the last decade.

Is there any other expenses associated with having 30,000 or 31,000 non-public kids besides transportation and special education? A It puts a strain on the taxpayer. And the Township and the taxpayers have to support, you know, police, firefighters, road work, trash removal. So in that regard, a normal district wouldn't have that kind of a strain -- Not, you know, a public school district. Another -- Another municipality wouldn't have that kind of strain on the tax base that Lakewood has. Q Are you familiar with the term, municipal overburden? A Yes, I am. (T2 MA 123-13 to

122-1)

To add insult to injury, Respondents removed Lakewood from its District Factor Group (DFG) ratings because a majority of children attend nonpublic schools. 72% of nonpublic school students in Lakewood receive federal free and reduced lunch and would be funded as at-risk had they been public school students (exhibit 2). In fact, had all 31,000 nonpublic children attended the public schools, the local share would remain the same \$102 million but the SFRA adequacy budget would increase to over \$750 million (Exhibit 20). The State share would be over \$650 million. Lakewood would be a DFG A, the lowest income rating for state districts.

A Now, you could also -- you know, you could also make the argument, although it's definitely debatable, if those 30,000 children came to the public schools there would be a substantial funding impact. Q And would the local fair share go up if those 30,000 kids go -- went to the public schools? A Not the way the statutes written apparently. THE COURT: But the State aid would increase. THE WITNESS: Definitely. (T2 MA 133-10 to 18).

Since the vast majority of children in reality attend nonpublic schools, 72% of whom are low-income, a district that Respondents would have otherwise considered to be one

of the lowest income in the state had these children attended public schools, was arbitrarily determined not worthy of low-income status. The arbitrary and capricious methodology of dealing with Lakewood has created the financial distress and the constitution inadequacy. The equities favor Petitioners. The State should immediately announce that the deficit will be filled without any cuts to the already barebones program to prevent teachers from leaving the district again.

The ultimate remedy is to correct the years of neglect, to fix the adequacy budget so that it is reflective of the true costs in Lakewood.

So, would -- would that also - Would the expense of paying for 30,000 non-public kids cause a strain on the tax base? A Well, like I said, it would cause the families -- The fact, you know, that there's so many families in Lakewood that don't use the public school system. And it's like six times the number of kids in the public -- I mean, as far as children, I'm not saying families. But it's -- The student ratio is about six times higher than the public school. And just that many -- that kind of a population would create additional municipal expenses that wouldn't be recognized in the -- because they're only looking at the 6,000 students when they do the adequacy part. Now

you have to understand, the adequacy budget determines the amount of equalization. So, the student enrollment drives the adequacy budget. And the local share has nothing to do with enrollment. But the local share is pretty static. Okay. It's going to be the same no matter what. So the number of students that drive the adequacy budget drive it higher if there were more students in the public school system. And therefore, everything additional, okay, those -- those students with the -- the waning [weighting] factors that would create the adequacy budget, any increase in the adequacy budget would be totally funded by State aid. Q So if Lakewood's -- Would it make difference if Lakewood, in the local fair share, if Lakewood's adequacy budget was 110 Million or 210 Million? Would the local fair share change? A No. Q Okay. The -- Are you familiar with what the local fair share is currently in Lakewood? A About 102 Million Dollars.

(T2 MA 126-6 to 127-14)

#### CONCLUSION

The New Jersey Constitution entitles the children of the State to a "thorough and efficient education." N.J. Const. art. VIII, § 4. To meet its constitutional duty, the School Finance Reform Act of 2008 (SFRA) "allocates state

resources to school districts, while also requiring certain levels of funding at the local level.” Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 152 (2009). The Adequacy Budget is the core calculation of the money needed to provide T & E.

Petitioners filed the present case because the adequacy budget in Lakewood bears no rational relationship to the district’s budget. Lakewood is unique because 31,000 students attend nonpublic schools. As Lakewood births have increased over the last twenty years with 4,464 births in 2015 compared to 4,245 in Newark, the total number of nonpublic students in grades K-12 has been increasing at a rate of approximately 2,500 per year. (Exhibit 34 at 8). The state law mandating the transportation of nonpublic students living remote from their schools and the federal constitutional mandate to provide special needs children with a Free and Appropriate Public Education in a district of over 37,000 students makes the state’s methodology of calculating the adequacy budget in Lakewood arbitrary and capricious. The total cost of special education and transportation in 2018-19 is projected at \$88,798,184. After deducting state aid and reimbursements, the total drain on the district that must come out of what is otherwise dedicated for T & E in 2018-19 is projected at \$63,265,124. The adequacy budget needs to be increased by

\$63,265,124 to reflect the reality of Lakewood.

This gap between the reality of requiring services to 37,000 students and the myth that Lakewood is a district of 6,000 students has decimated programs and courses, making what was once a high achieving district into one of the lowest in the state. This is heart of the matter.

**Petitioners move for emergency relief** because the longer \$17 to \$23 million remain in deficit the more teachers will be leave the district. **Petitioners also move for emergency relief** to ensure that the actual state aid for 2018-19 will include full transportation funding as an interim measure, not subject to state aid caps, until the legislature remedies the adequacy budget in Lakewood. This is akin to when the Supreme Court ordered Respondents to fully fund the Abbott districts because they had "status akin to that given to wards of the State." Abbott v. Burke (Abbott XXI), 206 N.J. 332,340 (2011).

Lakewood faces the \$17 to \$23 million deficit going into next year's budget and its students face the same challenges of the urban Abbott districts. There is no reason why the Commissioner cannot order full funding under the current law as an interim remedy, at the very least, to prevent further cuts when the budget is prepared in April 2018.

The State has controlled the finances of Lakewood for

four years. The finances have only grown worse. The problem is not mismanagement.

Q Okay. Does Lakewood have a revenue problem? A Yes. Q Does it have a spending problem? A No. MR. INZELBUCH: What do you mean? BY MR. LANG: Q Could you explain what you mean? THE COURT: Mr. Inzelbuch, you can't -- THE WITNESS: Well, I've been there for four years. So, we've done everything we can to try to balance the budget. And we're pretty much down to what we, you know, just what we need to meet T and E and get the Superintendent and the County Superintendent to sign off on the budget and certify that it's adequate. BY MR. LANG: Q Does Lakewood have a bare-bones budget? A Yes. (T2 MA 107-17 to 108-8).

It should be noted that the superintendent signing off on a budget and certifying that it is adequate does not mean that she certifying that the district is meeting T & E for the purposes of this Court.

"Apparently, a district cannot file a proposed budget without a signed transmittal letter on the specific form designated by the DOE. The letter of transmittal, or school district budget statement signed by a district superintendent and the board of education's secretary, is required, as an administrative practice, to be submitted. . . ." Abbott v. Burke, (Abbott XXI),

206 N.J. 332, 417 (N.J., 2011).

Noteworthy is footnote 19:

It should be noted, earlier in the hearings counsel ambiguously referred to the letter of transmittal as a "certification," thereby leading to confusion as to whether the document was a sworn statement as opposed to a "certification" in the non-legal sense of the word. *Kim*, 6 T 71:1-72:13. Clearly, the transmittal letter and form is not a "certification" as the legal term is understood; that is swearing to its contents.

The discrepancy between how Respondents calculate adequacy under the present system and the reality in Lakewood has increased every year. "Were we confident that a thorough and efficient education were likely to be achieved in the near future under the present system, we would not dream of intervening." 119 N.J. at 321. The constitutional deprivation in Lakewood will only get worse unless a court intervenes.

The facts in this case are a matter of public record and not subject to controversy. Despite the historic complexity of school funding litigation, the issues to be decided in this case are relatively simple. The state monitors agree that something must be done. The method of determining the necessary funding for education adequacy in Lakewood is so obviously miscalculated that a decision

can be now be rendered on the papers.

Respectfully submitted,

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Arthur H. Lang  
Attorney at Law  
Dated March 9, 2018



I, Arthur H. Lang, of full age, certify as follows:

The annexed documents are true copies of what they purport to be.

I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.