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PRELIMINARY STATEMENT

This court has ruled that the Lakewood Public School District (LPSD) is not providing its students with a constitutionally-mandated thorough and efficient education (T&E). But the source of that deficiency is contested by the parties and is at the heart of this appeal. Pursuant to this court's prior opinion, the Department of Education has undertaken a comprehensive review of LPSD's operations, which establishes that the failure to provide T&E is due to problems occurring at the district level. In contrast, Appellants claim that the court's finding is attributable to the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -71, arguing that the statute is therefore unconstitutional as applied to the District. But Appellants' claim is unsustainable because they have failed — and, in fact, have refused — to examine the root cause of the District's failings. Essentially, Appellants wholly disregard the real issue affecting students in LPSD: the District is plagued by decades of mismanagement and poor decision-making. These deficiencies, rather than the SFRA, have led to the inefficient use of substantial State aid and, worse still, resulted in public school students receiving a sub-par education.

LPSD has a pattern and practice of mismanaging funds. It failed to take steps to increase tax revenues in order to support its school programming, failed to address its growing special education and transportation expenses despite

repeated warnings to do so, and failed to establish appropriate internal controls to ensure costs are reasonable and that payments are properly tracked. The District's own policies also limit chances for student success. These include requiring teachers to adhere to strict scripts and pacing guidelines which do not allow teachers the time to address student needs or ensure that students understand and comprehend the lessons. This is especially true for English Language Learners (ELL) and students with disabilities; District teachers have reported that the students are essentially left behind. LPSD also makes technology a necessity for student success, but failed to take steps to ensure its students have equitable access to the required tools. On top of that, the record demonstrates a culture of apathy and low expectations for students.

Appellants ignore these critical failings and instead simply claim that because the State has provided LPSD with loans to assist it in balancing its budget (due to the District's poor planning), the District must not be receiving enough funding through the SFRA. This logic is fundamentally flawed. LPSD has received sufficient aid through both the SFRA and State loans. If the District still cannot provide T&E with all of the assistance it has received, clearly the issue is not one solely of funding. For these reasons and those that follow, the court should affirm the well-reasoned decision of the Assistant Commissioner and find the SFRA constitutional as applied to LPSD.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

A. The School Funding Reform Act of 2008.

In an effort to provide a funding formula that satisfied the T&E clause and the Court’s Abbott mandates, in January 2008 the State enacted a new statewide school funding formula to ensure that public schools throughout the State receive financial support needed to deliver T&E: the SFRA. L. 2007, c. 260; N.J.S.A. 18A:7F-43 to -71. The core of the SFRA is the adequacy budget, which is an estimate of what it costs each district to provide the core curriculum content standards (CCCS)² to each student according to each district’s enrollment and student characteristics. N.J.S.A. 18A:7F-51. A major component of each district’s State aid — equalization aid received from the State — is calculated based on a district’s ability to contribute to its overall adequacy budget through its local contribution, otherwise known as its “local fair share” or “LFS.” Abbott v. Burke (Abbott XIX), 196 N.J. 544, 556-57 (2008); N.J.S.A. 18A:7F-5(b) and -52(a). In other words, the SFRA, as a wealth-equalized formula, presumes a

¹ The procedural history and counterstatement of facts are closely related and have been combined to avoid repetition and for the court’s convenience.

² The CCCS are now known as the New Jersey Student Learning Standards. See N.J.A.C. 6A:8-1.1 to -3.3; N.J.S.A. 18A:7F-4.1 to -4.7. The Supreme Court has found the standards to be a reasonable expression of constitutionally sufficient T&E. Abbott v. Burke (Abbott IV), 149 N.J. 145, 161-62 (1997).

district's contribution to its annual budget is the amount of funds which may be raised through local taxes to support the district's annual budget. N.J.S.A. 18A:7F-52, -5(b) and (c).³

B. The Lakewood Public School District.

Lakewood Township is a rapidly expanding municipality, growing from a population of 92,843 in 2010 to an estimated 139,506 in 2023. (Ra165).⁴ As a result, it is now New Jersey's fifth largest municipality. Ibid. Approximately 50,000 school-aged children live within the District, but only 4,600 of those students are enrolled in Lakewood's public schools. Ibid. The remaining 45,400 students (84% of the school-aged children) are enrolled in non-public schools, most of which are private religious schools. Ibid. By last count, there were 9 public schools and over 170 non-public schools located within the District. Ibid.

³ A district's ability to raise its local levy is capped. In April 2007, the Legislature enacted L. 2007, c. 62, which imposed a 4% limitation on school district and municipal tax levy increases. L. 2007, c. 62 §§ 1-2; N.J.S.A. 18A:7F-38 and -39. In July 2010, the Legislature further revised the tax growth limitation provisions, reducing the amount by which local tax levies could increase from 4% to 2%. L. 2010, c. 44, § 4; N.J.S.A. 18A:7F-38. The new law permitted districts to submit a special question to the voters to increase the levy above the capped amount under certain circumstances and to "bank" any portion of the permitted 2% increase plus applicable adjustments not used by the school district in a budget year. L. 2010, c. 44, § 5.

⁴ "Aa" refers to Appellants' appendix; "Ra" refers to Respondents' appendix; and "Ab" refers to Appellants' brief.

1. The District's Financial Condition and SFRA Funding.

In 2010, LPSD had a budget surplus of \$5,000,000. (Aa13). However, from 2011 to 2014, the District chose not to raise its tax levy to the cap. Ibid. As a result, LPSD was not taxing up to its LFS from 2014-2018. (Aa13; Ra71). Altogether, LPSD taxed \$31,501,523 less than its LFS from 2014-2018. (Ra71; Aa13). The District also chose not to exercise its authority under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 to present voters with a referendum to increase the school tax levy in any year except 2016, when the voters rejected it. (Ra98; Aa13).

At the same time it was failing to increase its LFS, the District was also making significant expenditures for special education and transportation costs for both public and private students. (Ra72-73). From the 2014-2015 to 2018-2019 school years, LPSD's special education tuition expenditures rose from \$21,122,137 to \$33,305,378. (Ra72). Over that same time period, its total transportation costs for non-special education students rose from \$23,235,597 to \$31,155,570. (Ra73). Because of LPSD's ballooning expenses and lack of action to increase revenues, it had a budget deficit of approximately \$6,000,000 in 2013-2014. (Ra65-66).

Annually, the amount of State aid a district receives is determined by the

Legislature’s annual Appropriations Act. N.J.S.A. 52:27B-20; N.J.S.A. 18A:7F-5. From fiscal year (FY) 2010 through the enactment of L. 2018, c. 67, State aid was not allocated according to the provisions of the SFRA; instead, “it was calculated based on provisions included in the State budget, with underlying funding policy changing every year.” (Aa14).⁵

The Department has also provided State aid advances pursuant to N.J.S.A. 18A:7A-56 in order to help LPSD meet its needs. From FY15 to FY24 the Department provided \$215,124,570 in loans on top of its State aid. (Ra166).

2. The State’s Monitoring of the District.

In 2009, the Department conducted a Needs Assessment of LPSD to “assess[] the adequacy of the educational inputs and programming currently being provided” and to “identify the unique educational needs of the students” (Ra73). In its assessment, the Department noted that while the public school enrollment was stable, LPSD’s non-public enrollment was increasing at a rapid pace. (Ra74). The assessment also identified transportation and special education costs as large strains on LPSD’s budget, but found that the District “could do significantly more with the funds currently available to it.” Ibid.

⁵ From FY18, State aid has started to be allocated based on the SFRA’s funding formula.

Specifically, the Department recommended that the LPSD reconsider its courtesy busing⁶ policy and develop ways to educate more special education students in-district, neither of which the District acted on with any sense of urgency. (Ra74; Ra100; Aa16).

In 2014, LPSD was subject to a State audit by the Office of the State Auditor (OSA). (Ra75). The audit, which examined the period of July 1, 2011, to December 31, 2013, was intended to “determine whether financial transactions were related to the school district’s programs, were reasonable, and were recorded properly in the accounting systems.” Ibid. After reviewing LPSD’s operations, OSA found that the District’s “financial transactions . . . were not always reasonable or properly recorded in the accounting system.” Ibid. And just as the Department had back in 2009, OSA found transportation and special education expenses were significant sources of concern. Ibid. OSA

⁶ School boards are required to provide transportation to public school students who live “remote”—meaning, beyond two and a half miles for high school students and beyond two miles for elementary school students—from their assigned school of attendance, N.J.S.A. 18A:39-1; N.J.A.C. 6A:27-1.3, non-public students who reside remote from their school of attendance and meet the eligibility criteria of N.J.A.C. 6A:27-2.2, and students with disabilities who reside remote from their assigned school or who require transportation services in accordance with their individualized education program (IEP). N.J.A.C. 6A:27-1.3. School boards may also, but are not required to, provide transportation for public and non-public students who do not meet the eligibility criteria. N.J.S.A. 18A:39-1.1 to -1.3; N.J.A.C. 6A:27-1.4. This is known as “courtesy busing.”

provided a number of recommendations to the District to rein in those costs, including eliminating separate start and end times for non-public schools, developing bus routes based on school location rather than specific school, tiering bus routes for bidding purposes, and improving the District's approval and document retention practices for special education students. (Ra75-76).

Because LPSD had run a deficit, a State monitor was appointed to the District in 2014. (Ra65-66). The monitor required the District to increase its tax levy up to the maximum amount. (Ra61; Ra97; Aa13). But, because LPSD had not increased the levy to the maximum amount in prior years, the District was still not generating the level of money it could have had such proactive steps been taken earlier. (Ra97; Aa13).

C. The July 7, 2014 Petition of Appeal.

On July 7, 2014, Appellants filed a petition of appeal with the Commissioner alleging that the SFRA is unconstitutional as applied to LPSD because the District was not receiving sufficient funding to provide its students with T&E. (Ra2; Ra112-13). The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on September 4, 2014. (Ra3).

Appellants amended their petition four years later, on September 4, 2018, to clarify the relief they were seeking. (Ra5). The amended petition sought a determination that: (1) the SFRA as applied to LPSD does not provide sufficient

funding to enable the District to provide T&E as mandated in our State Constitution, N.J. Const. art. VIII, § 4, ¶ 1; (2) reliance upon discretionary State aid payments pursuant to N.J.S.A. 18A:7A-56 does not provide T&E funding that is certain and predictable; (3) the constitutional imperative regarding T&E requires sufficient funding that is not discretionary; and (4) the Commissioner recommend that this matter be remedied by the Legislature. Ibid.

D. The March 1, 2021 Initial Decision.

On March 1, 2021, the Administrative Law Judge (ALJ) issued an initial decision concluding that LPSD was not providing T&E to its students. (Ra91; Aa2). But she did not find that the failure to provide T&E was a result of any constitutional infirmity with the SFRA as applied to the District. (Ra95; Aa2). Rather, she concluded LPSD’s failings were a result of a number of contributing factors distinct from the SFRA, including fiscal mismanagement by the District, community choices, and other legislation. (Ra95-102).

The ALJ noted that despite the rapid increase in the District’s non-public student population — and attendant increase in transportation and special education costs — “the District decided to keep the [tax levy] stagnant.” (Ra97). Although the State-appointed monitor required LPSD to increase the levy, the District’s failure to do so earlier meant that it was “not taxing up to its local fair share” and “not generating the money that it could have been” to support the

District's obligation to provide T&E. Ibid. The ALJ also found that LPSD did not demonstrate it had done everything it could to cut down its ever-growing transportation costs, nor had it attempted to curb costs associated with educating special education students by educating them in-district. (Ra100-02). Lastly, the ALJ concluded that other, non-SFRA legislation such as N.J.S.A. 18A:7F-38 and the annual Appropriations Act contributed to the District's financial situation. (Ra98-99).

As a result of these voluntary choices and non-SFRA factors, the ALJ held that the SFRA was not unconstitutional as applied to LPSD. (Ra102).

E. The July 26, 2021 Final Agency Decision.

On July 16, 2021, then-Acting Commissioner Angelica Allen-McMillan issued a final decision rejecting the initial decision in part and adopting it in part. (Ra121). In reaching her decision, the Commissioner accepted the ALJ's findings of fact, but disagreed that such findings led to the conclusion that LPSD's public school students were not receiving T&E. (Ra117-18). Despite this conclusion, the Commissioner recognized the concerning educational deficits revealed during the course of the OAL hearing, and ordered the Department to conduct a comprehensive review of LPSD's organization, structure, and policies. (Ra118). Because the Commissioner rejected the ALJ's findings regarding T&E, she did not address the constitutionality of the SFRA

except to generally concur with the ALJ's finding that it was not unconstitutional as applied to the District. (Ra121).

F. The Appellate Division's March 6, 2023 Decision.

On March 6, 2023, this court issued a published decision reversing the Commissioner's decision. Alcantara v. Allen-McMillan, 475 N.J. Super. 58 (App. Div. 2023). The court reviewed the Department's statistics, comparing the performance of LPSD's public school students to State averages, and found the record showed that the District's public school students were not receiving T&E. Id. at 69-70. The court did not, however, reach whether such a failure was a result of the SFRA. Instead, the court remanded the matter to the Department to "consider [Appellants'] substantive arguments pertaining to the SFRA" Id. at 71.

G. The Comprehensive Review of the District.

Following this court's March 6, 2023 decision, the Commissioner expedited the comprehensive review of LPSD. (Ra122). The Department retained the services of Dr. Kimberley Harrington Markus, a former Commissioner of the Department; Public Consulting Group (PCG), a public sector consulting firm with an extensive background in education; and Jeremiah Ford, an expert in New Jersey public school transportation, to undertake the analysis. Ibid. PCG, in turn, assembled a multidisciplinary team of educational

specialists and a financial auditing firm to conduct the evaluation, focusing on five key areas: governance, curriculum and instruction, special education, financial practices, and transportation. (Ra126).

The experts issued their report on the comprehensive review of LPSD on March 1, 2024. (Ra124). The report answered two questions: (1) “what is the role of SFRA in deprivation of T&E in [LPSD]?” and (2) “what other causes may be impacting [LPSD’s] deliver[y of] T&E?” (Ra126). The report concluded that the SFRA was not the cause of the District’s failure to provide T&E. (Ra154). Rather, the report outlined significant issues with LPSD’s overall management and functioning, including finding the District to be plagued by poor communication, a lack of “intentional planning,” and ineffective or inefficient systems. (Ra131-34).

1. Governance.

The Comprehensive Report details a number of significant concerns directly related to LPSD’s overall governance and structure. Starting with LPSD’s Board of Education, the Report found that the Board did not adhere to standard practices typically exercised by boards of education and outlined by the New Jersey School Boards Association. (Ra126; Ra182). Notably, meetings lack action items and are conducted without discussion on any agenda items or committee reports. (Ra134; Ra181). Nor does the Board read, review, discuss,

or question District policies. Ibid. Even during meetings where there were a significant number of new policies placed on the agenda, the Board held no discussions. (Ra134; Ra182). This caused the Report to question Board members' level of involvement and to note that absent more formal discussion, the Board is "not able to inform the public about changes and additions to policies" that will affect the school community. (Ra124; Ra182-83).

And despite the District's financial struggles, the Board does not discuss financial issues or present detailed budgetary information during meetings, unlike comparable districts in the State. (Ra181-82). The Board also has no strategic plan in place and has "minimal" involvement with the budget. Ibid. In fact, Board members were "not entirely familiar with [budget] details." (Ra184).

Board meetings are also not led by the Board President, whose responsibility should be to ensure adherence to proper procedure. (Ra180-81). Rather, the Board President has effectively abdicated his role and responsibilities to the Board's attorney. (Ra133; Ra173; Ra180). The Report noted that the level of control exercised by the Board's attorney is unusual, as he takes a "far more active role than the typical board attorney in District business." (Ra127; Ra173; Ra191). On top of that, the Report found that LPSD's "legal expenses per pupil are significantly higher than" comparable

districts. (Ra127; Ra173; Ra191).⁷ In the 2021-2022 school year, for example, the District’s per pupil legal costs were over four times higher than the next highest comparison district, despite the fact that LPSD has a significantly smaller public school population. (Ra171; Ra191).

The Report also highlighted certain Board policies which “have a big impact on the school District and its operations” (Ra184). First, the Report looked at Policy 5112: Entrance Age, which was raised as a concern by District staff because in most districts students entering kindergarten must turn five-years old by October 1 of that given school year. (Ra135; Ra184-85). Under Policy 5112, LPSD permits students who will not turn five-years old until December 31 to register for kindergarten. (Ra135; Ra184-85). As a result, the District’s kindergarten classes can have students aged four to six years old for nearly half of the school year, and by third grade classes can have students aged seven to ten years old. (Ra135; Ra185). This policy is “particularly problematic” because “[s]tudies have shown that in the early stages of school age children development, there is a significant difference in terms of maturity,

⁷ For purposes of comparative analysis, the Comprehensive Report selected four districts—Toms River Regional School District, Brick Township Public Schools, Jackson Township School District, and Jersey City Public Schools—as comparison districts due to their proximity to LPSD, size of district, socioeconomic makeup of the district, and financial status. (Ra170).

behavior, and cognitive abilities between children during these stages of development.” (Ra185-86). Thus, cognitive development for LPSD students enrolled in the same class can be “substantially different” and may present as gaps in literacy development and math. (Ra135; Ra185). These “gaps [will] continue as the student moves into upper grades.” (Ra185).

The Report also noted that this policy may affect student achievement and identification for special education placement. (Ra135; Ra185). One study from the National Bureau of Economics found that students “who start school at an older age do better than their younger classmates and have better odds of attending college.” (Ra185). There is also evidence, the Report explained, that students who start school earlier are more likely to be “placed in special education or diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD),” as “the youngest students in a kindergarten cohort are 40% more likely to be placed in special education than are the oldest students.” Ibid.

The Report also examined Policy 2330: Homework, and Policy 7523: School District Provided Technology Devices to Pupils. (Ra186). Under Policy 7523, technology devices made available to students are not considered “mandatory to a successful completion of a pupil’s classroom curriculum.” Ibid. Similarly, Policy 2330 states that students do not require a computer to complete assignments. Ibid. But these policies are at odds with the current instructional

approach used by the District. Ibid. The Report found that in LPSD’s high school, “most instruction . . . uses a SMART Board, a District provided PowerPoint and a Chromebook with Google Classroom installed.” Ibid. “In many instances, students do not have traditional textbooks, but rather digital textbooks or supplemental materials on their Chromebooks.” Ibid. Also, both in-class assignments and homework are assigned and submitted through Google Classroom. Ibid. Thus, “a computer is needed to complete assignments.” Ibid. But many students do not have access to a personal computer, and the District does not allow students to take home district-purchased devices. Ibid. Therefore, many students use their cell phones to complete assignments, “which may not be conducive to producing quality work,” or they just do not complete computer-based assignments, which directly affects their grades. Ibid. The Report concluded these “outdated policies directly impact teaching and learning practices” and student achievement in the District. Ibid.

And based on observations and discussions with District staff, the Report found there was “a district-wide culture of low expectations for students across the [LPSD.]” (Ra127; Ra131; Ra192). District staff attributed students’ “low academic performance, poor attendance, lack of motivation, and [] overall poor attitude” on their “poverty or lack of English proficiency.” (Ra131; Ra192). Specifically, District staff reported that “[t]he low academic ability of students

makes it challenging to have higher-level conversations and ask thought-producing questions;” “[m]any students are late to school, miss school, and are dealing with family, cultural, financial, and living conditions issues that they bring to school or interfere with their learning;” “[m]any students have an apathetic attitude towards school because many of them are exhausted from working jobs until very late;” and “[t]he cultural diversity makes it difficult to teach to the students’ needs. The students are all on different levels depending on where they came from.” (Ra193). This lack of academic optimism can negatively affect students’ academic achievement. (Ra131; Ra193).

In addition to a lack of academic optimism, the Report detailed diminished staff wellness and morale. Teachers are “overloaded” and many believe that the work “can be defeating and deflating.” (Ra131-32; Ra193). And teachers explained that “frequent changes and new rules from the District . . . create confusion and inconsistency, contributing to the overall sense of overwhelm.” (Ra193).

Lastly, the Report described communication as an area of weakness in the District, particularly with students and parents. According to District data, 77.2% of students report Spanish as their home language, “making the need for translation services in the District high.” (Ra195). Despite this, only 15% of the documents on the District’s website are in Spanish, and most documents are

PDFs written in English that do not function with Google Translate. (Ra132; Ra195). In terms of staff, only 5% of District staff speak Spanish. (Ra195). For these reasons, “[t]ranslation services were referenced frequently as a challenging area for the District.” (Ra132; Ra194).

2. Curriculum and Instruction.

The Report found that a significant amount of the curriculum is developed in-house without oversight from an Assistant Superintendent in charge of curriculum. (Ra135; Ra203). Consequently, there is a “lack of evidence, research-based, current resources to support the curriculum.” (Ra135). And the locally-developed curricular resources are “not research backed or supported,” and do not fully align with State standards. (Ra136). They also contain “mistakes” that teachers “constantly . . . find and report.” (Ra212). As for curricular resources purchased by LPSD, the Report found the resources being used are old; some materials are at least eleven years old. (Ra135; Ra205).

The Report also described LPSD’s “strong commitment to the use of scripts and pacing guides at every grade level and within each content area.” (Ra136; Ra207). Teachers receive a script and instructional framework for each lesson. (Ra207-08). These scripts and guides are created in-district, and require teachers to stay within ten days of the pacing guide expectations. (Ra136; Ra207-08). The scripts and guides are also subject to “constant” change both

during and at the end of the year, “which means that teachers are relearning the curriculum and often familiarizing themselves” with new lessons constantly. (Ra136; Ra210).

Teachers are also subject to “significant” oversight to ensure they adhere to the scripts and pacing guides. (Ra210). According to the Report, on top of the teacher evaluation program, supervisors conduct classroom walkthroughs and observations each week, and “instructional coaches” observe classrooms on a weekly basis. Ibid. Plus, principals and assistant principals are required to complete three to five classroom walkthroughs per day. Ibid. This level of oversight, the Report found, was “excessive and has had [a] negative [impact] on school-based staff.” Ibid.

Because of the strict adherence to the District’s pacing guides, teachers are required to “move on to keep up with the pacing guides” even if “their students are struggling.” (Ra212; Ra229). This is especially true for ELL students — while “some scripts and instructional frameworks may have suggestions for differentiating for their ELL students, there is no time to incorporate those ideas as [teachers] have to rush through their lessons to ensure they are on track.” (Ra212). And the frequency of walkthroughs is also “likely disruptive to classroom instruction and has not resulted in increased student gains.” Ibid.

Notably, a survey of educators in LPSD revealed the deleterious effect these policies have had on the quality of education in the District. Specifically, educators complained that: “[LPSD] doesn’t use high quality curriculum to meet the needs of students;” “[c]urriculum created ‘in-house’ lacks the materials and resources to reach all students;” “[t]he curriculum provided for math is awful, and not aligned properly with the [S]tate standards;” “[t]he curriculum is not appropriate for the population of students” taught and “creates a barrier for students to succeed and learn;” the District switches programs too often; the District is overly focused on strict adherence to pacing guidelines which “doesn’t allow teachers time to teach what is needed to get the students to meet” educational standards; and the District’s “curriculum in both math and ELA is riddled with mistakes that affect student growth.” (Ra211). Sadly, these are just some of the many issues and concerns teachers raised. See *ibid.*

Also, district boards of education are required to implement systems for planning and delivering intervention and referral services, including multidisciplinary team approaches such as New Jersey’s Multi-Tiered Systems of Support (MTSS) Framework.⁸ N.J.A.C. 6A:16-8.1. While LPSD has

⁸ MTSS is a three-tiered framework for support services. (Ra213-14). Tier 1 “provides high quality learning environments, evidence-based curricular and instructional practices, and a continuum of supports and interventions in general education classrooms;” Tier 2 “provides supplemental supports and

nominally adopted MTSS, most teachers reported they did not know what MTSS was or said their school did not use it. (Ra136; Ra216). Even when implemented, the support systems were not able to be implemented effectively due to the District’s strict structure and pacing of local curriculum. (Aa12; Ra216). According to the Report, teachers struggle to meet student needs because “often almost the entire classroom requires Tier 2 intervention.” (Ra216). Further, school staff reported that LPSD elects to end Tier 3 intervention (individual support) in third grade. (Ra136; Ra216). But, as explained above, “[t]his is especially problematic given the local policy extending [the] kindergarten cutoff date,” resulting in many third grade students still being “developmentally young” and “continuing to struggle with reading.” (Ra135; Ra184-86). Without the necessary tiered supports and structured intervention time, “the [developmental] gap will continue to expand for students.” (Ra136).

3. Special Education.

As to special education, the Report found that LPSD has unusually high numbers of students identified with disabilities. In 2021-2022, the percentage of students aged 5-21 with an individualized education plan (IEP) was 28.8%.

intervention;” and Tier 3 “provides intensive supports and interventions that may be delivered individually and provided in or outside of the classroom after the delivery of core instructions.” (Ra214).

(Ra243). This is nearly 10% higher than the State average, and twice the national average. (Ra243-44). The rate of students in the District diagnosed with an intellectual disability is also nearly twice the national rate. (Ra244). There are also “not[able]” incident rates specific to student demographics — in 2022, 84% of students in the District identified as Hispanic and 9.8% identified as White; of these, 67% and 25.9%, respectively, had an IEP. (Ra245). Notably, the Report detailed concerns within the District about student identification, including the eligibility criteria used and that “parents believe their children have not been properly evaluated.” (Ra261).

These rates of identification have affected LPSD’s ability to use federal funds earmarked for special education. As the Report explained, districts receive federal funding for special education through the IDEA Part B. (Ra249). However, the District has been found significantly disproportionate in its representation of students with disabilities in 2022 and 2023. Ibid. As a result, the District is required to set aside 15% of its IDEA funding for Comprehensive Coordinated Early Intervening Services (CCEIS). Ibid.

LPSD also has a high number of students in out-of-district placements. In 2021-2022, 171 students aged 3-4 and 535 students aged 5-21 were placed in Approved Private Schools for the Disabled. (Ra254). Of these students, the majority were diagnosed with speech or language impairment as a primary

disability. (Ra256). The Report found it was “unclear why so many students” with such a disability are in out-of-district placements rather than in-district. Ibid.

LPSD also has significant costs attached to students in out-of-district placements. In 2019-2020, the District spent \$48,755,738 for 402 students in out-of-district placements, for an average per-pupil cost of \$121,282.93. (Ra266). In 2021-2022, while the number of students in out-of-district placements decreased to 372, the total expenditure increased to \$57,499,863 and the per-pupil amount increased to \$154,569.52. Ibid.

As to the quality of education provided, the Report found that LPSD has, for the past three years, failed to meet State targets for educating special education students in the least restrictive environment. Ibid. Further, due to the strict pacing guidelines detailed above, teachers have expressed concerns over their ability to meet the needs of students with IEPs. (Ra267). Because of this, students are often in “disengaged learning,” using “[r]ote fill-in-the-blank prompts” with “limited checking for understanding or mastery.” (Ra269-70). The pacing guidelines were an “impediment in nearly all” classrooms. (Ra271). Also, the District does not have programming for Emotional Regulation Impairment, Visual Impairment, or Intellectual disabilities. (Ra129; Ra238; Ra264).

The Report also found several issues with IEPs. These include, but are not limited to: most did not include necessary rating scales to evaluate students, (Ra274); parental input was almost nonexistent, ibid.; and goals and progress reports were “inconsistent,” with some even being left blank. (Ra274-75).

4. Financial Practices.

As part of the Comprehensive Review, a forensic analysis of LPSD’s financial data analytics and internal controls was conducted. (Ra142; Ra294). This analysis revealed “significant deficiencies . . . on the vendor management controls in the procure to pay cycle as internal controls related to vendor selection, review, and retention are not operating effectively.” (Ra294). The analysis also found “significant deficiencies . . . on the payroll processing cycle, as internal controls related to review and completion of the payroll register and payroll processing checklist, respectively, are not operating effectively.” Ibid. And there were “significant deficiencies” in internal controls related to new hire training and “deficiencies noted on the financial close cycle” related to “review of cash flow statements.” Ibid.

5. Transportation.

Finally, the Comprehensive Report reviewed LPSD’s transportation practices, finding several areas of concern which “may have an impact on [the] provision of” T&E. (Ra143; Ra315). The District is responsible for providing

transportation to all eligible public school students, as well as many of the non-public students residing in the District. N.J.S.A. 18A:39-1; N.J.A.C. 6A:27-1.3, -2.2; (Ra304). As of October 2023, “the district financially supported transportation for 4,727 public school students . . . and over 36,231 nonpublic school students.” (Ra304). Because of the sheer number of non-public students in the District, LPSD’s transportation obligations “dwarf[.]” that of comparable districts. (Ra305).

LPSD does not operate its own bus yard; instead, it uses the public bidding process to procure contracts for all bus routes. Ibid. The Lakewood Student Transportation Authority (LSTA), established by L. 2016, c. 22, is a consortium that was designed to support LPSD in meeting its transportation needs with respect to non-public students. (Ra306). A 2020 study found that the LSTA saves the District over \$11,000,000 as compared to the District bidding and managing all routes. (Ra306-07). But these savings were not passed on to the District. Instead, any savings were used to provide courtesy busing — that is, non-mandated transportation — for both public and private school students “in accordance with the local government’s preferences.” (Ra307).⁹ And a significant portion of LPSD’s transportation funding goes to courtesy busing.

⁹ In 2024, the State passed L. 2023, c. 326 which requires any savings to be returned to the District.

(Ra305). In FY24, LPSD provided transportation to 40,958 students. Ibid. Of these students, 11,410, or 27.8%, were students for whom the district provided non-mandatory courtesy busing at the district's expense. Ibid.

In terms of bus routes, the Report found that in some cases, buses were being used for multiple routes, but the routes are bid on as stand-alone routes. (Ra143; Ra310-11). The District could save on transportation costs, the Report found, by soliciting bids on pre-packed groups of routes based on historical busing patterns, and could double or triple tier routes in order to decrease expenses. (Ra143; Ra311).

The Report also found potential mismanagement and lack of internal controls of the District's transportation operations. Notably, the Report indicated there was insufficient separation between LPSD as a contracting agency and the LSTA as a vendor. (Ra131; Ra303). And at least one high-salaried employee may have been employed by both the District and the LSTA, creating "potential for procurement issues, diminished incentive to return saved funds to Lakewood, and potential for conflicts in contract oversight of the LSTA as a vendor." (Ra144; Ra315). Furthermore, many non-public students do not have an identification number in the District Report of Transported Resident Students (DRTRS), which is the State transportation system, creating the risk

that students might be counted and funded in multiple counties. (Ra144; Ra315).

Because of these issues, as well as the multitude of issues listed above, the Comprehensive Report concluded that “[t]he pervasive inefficiencies, deficiencies, and the apparent shortfall in oversight and strategic systemic action by the District,” rather than the SFRA, have caused LPSD’s failure to provide T&E. (Ra154). Both Appellants and LPSD had the opportunity to respond to the Report, including its findings and conclusion, and did so. (Aa5-6).

H. The April 1, 2024 Final Agency Decision.

After reviewing the entire record in this matter, including Appellants and LPSD’s responses to the Comprehensive Report, Assistant Commissioner Cary Booker issued a final agency decision on April 1, 2024, finding that “[LPSD’s] failure to provide T&E to its students does not derive, in significant part, from the provisions of the SFRA.” (Aa21).¹⁰ In reaching this decision, the Assistant Commissioner rejected LPSD’s argument that the SFRA fails to take into consideration its unique demographic situation and the fact that it bears extraordinary costs in providing transportation and special education services to

¹⁰ Commissioner Kevin Dehmer replaced Angelica Allen-McMillan as Commissioner of Education on February 12, 2024. The final decision on remand was then delegated to Assistant Commissioner Booker pursuant to N.J.S.A. 18A:4-34.

more than 30,000 nonpublic school students. (Aa11). Rather, the Assistant Commissioner concluded that “[LPSD’s] own choices and management issues have resulted in the unavailability of funds that could and should have been used to provide T&E to its students.” (Aa11-12).

More specifically, the Assistant Commissioner found that LPSD has “chosen not to require its tax base to further support its schools,” in accordance with N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39, “and suffers from local mismanagement regarding its transportation and special education costs.” (Aa12). The Assistant Commissioner concluded that these issues, rather than infirmities in the SFRA, are significant contributing factors in the District’s inability to provide T&E. (Aa21). Furthermore, he explained that other laws, such as those affecting local tax levies and annual appropriations, play as much of a role in LPSD’s finances as the SFRA. (Aa13-14). And he concluded that the District’s ongoing and pervasive fiscal mismanagement have led to inefficient use of funds that otherwise could have been used to ensure students were receiving T&E. (Aa14-15). For example, the Assistant Commissioner found that LPSD failed to keep track of expenditures, including failing to have any purchase orders in place for students sent to out of district placements. (Aa14). LPSD also did not keep proper documentation for special education students and had “significant data discrepenc[ies] and reporting issues related to

special education.” (Aa15).

Further, the Assistant Commissioner noted that transportation and special education services were recognized as areas of concern since 2009, yet LPSD never took significant steps to address those concerns. (Aa16-17). For these reasons, and in light of the information contained in the administrative record and comprehensive report, the Assistant Commissioner rejected LPSD’s claim that the SFRA was unconstitutional as applied to the District. (Aa21).

This appeal followed.

ARGUMENT

THE SCHOOL FUNDING REFORM ACT IS CONSTITUTIONAL AS APPLIED TO THE LAKEWOOD PUBLIC SCHOOL DISTRICT.

Appellants bring this action seeking a ruling that the SFRA is unconstitutional as applied to LPSD, but their claim falls far short. As the Assistant Commissioner correctly found, the District’s failure to provide T&E to its students is not due to the SFRA, but rather systemic, pervasive mismanagement by the District. As such, the SFRA is not unconstitutional as applied to LPSD.

Few enactments in our State have undergone as much scrutiny as the SFRA, with the Supreme Court twice declaring it to be constitutionally sound. Shortly after its passage, the State filed a motion with the Court seeking a

declaration that the SFRA is constitutional. Abbott v. Burke (Abbott XX), 199 N.J. 140, 145 (2009). The Court declared the SFRA constitutional, stating that through the SFRA, “[t]he State has constructed a fair and equitable means designed to fund the costs of [T&E.]” Id. at 172. The Court further held that the SFRA “is designed to achieve a thorough and efficient education for every child, regardless of where he or she lives.” Id. at 175.

A few years later, the Court revisited the SFRA in Abbott v. Burke (Abbott XXI), 206 N.J. 332, 370 (2011), when a State budget crunch led to funding shortages. The Court opined that the “SFRA is the preferable and predictable way to provide funding . . . so that sufficient resources are provided and can be planned for in the preparation of cohesive educational programming.” Id. at 369. Thus, the Court once again reaffirmed the constitutionality of the SFRA. Id. at 369-70 (directing that funding to the Abbott districts be calculated and provided in accordance with the SFRA).

The SFRA, therefore, is entitled to a presumption of constitutionality that can be rebutted “only upon a showing that the statute’s repugnancy to the Constitution is clear beyond a reasonable doubt.” Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 285 (1998); accord Lewis v. Harris, 188 N.J. 415, 459 (2006); Town of Secaucus v. Hudson County Bd. of Taxation, 133 N.J. 482, 492-93 (1993), cert. denied sub nom., 510 U.S. 1110 (1994).

Appellants erroneously claim that because this court has found that its students were being denied T&E, LPSD should be afforded a “special constitutional status” akin to SDA districts,¹¹ and that the Department should bear the burden of establishing the SFRA’s constitutionality as it did in Abbott. (Ab7-10). But this matter is unlike Abbott. There, in finding previous school funding regimes unconstitutional as applied to certain districts, the Court relied upon those districts’ inability to raise revenue either due to a lack of a tax base or municipal overburden. Abbott v. Burke (Abbott II), 119 N.J. 287, 325 (1990) (finding that municipal overburden “effectively prevents districts” from raising money to support education in special needs districts). There is nothing in the record to suggest, nor do Appellants allege, that LPSD suffers from the same municipal overburden common to SDA districts such that “it cannot raise revenue to support its public schools and reduce the impact of transportation and special education costs.” (Aa12). And, unlike SDA districts, LPSD has received sufficient financial assistance through State aid and loans to help cover its budget shortages. Despite this, “the record demonstrates that [LPSD’s] own choices and management issues,” including its decision to not raise its tax levy

¹¹ The school districts from the Abbott cases were historically referred to as “Abbott districts.” Abbott XXI, 206 N.J. at 406. Effective January 13, 2008, the Legislature eliminated that designation and replaced it with a new one, “SDA district,” L. 2007, c. 260, § 39.

to the cap, “have resulted in the unavailability of funds that could and should have been used to provide T&E to its students.” (Aa11-13).

Appellants ignore these clear distinctions and cite no law to support their conclusory claims. As such, this matter is reviewed under the familiar standard for as-applied constitutional challenges; that is, “[w]hether a statute passes a constitutional challenge ‘as-applied’ to any individual school district at any particular time must be determined only in the factual context presented and in the light of circumstances as they appear.” Abbott XX, 199 N.J. at 235 (citing Robinson v. Cahill, 69 N.J. 449, 455 (1976)). A statute’s constitutionality is “presumed,” and the burden falls on the party challenging to “demonstrate[e] the unconstitutionality” of the statute. DePascale v. State, 211 N.J. 40, 63 (2012). And, whether the SFRA is unconstitutional as applied to LPSD “turn[s] on proof that [Appellants] suffer educational inequities and these inequities derive, in significant part, from the funding provisions” of the SFRA. Abbott v. Burke (Abbott I), 100 N.J. 269, 296 (1985).

Appellants have failed to make that showing here. They do not identify any facts in the record to support their claim that LPSD’s failure to provide T&E is due in significant part from the SFRA. Instead, Appellants simply declare that because the District is not providing T&E, the SFRA is “not adequate,” (Ab18), and is operating below “its optimal level” (Ab11).

Appellants also take aim at the State’s provision of significant additional financial aid to LPSD in the form of loans, asserting that these loans demonstrate that “SFRA funding for Lakewood is insufficient.” (Ab12). But Appellants miss the mark. At no point do Appellants identify what would be “adequate,” “optimal,” or “[s]ufficient” levels of funding, and Appellants sorely misconstrue the conclusions to be drawn from the State’s provision of loans to the District.

Between FY15 and FY24, the Department provided LPSD \$215,124,570 in loans on top of its SFRA funding. (Ra166). Despite this, Appellants admit that students are still being denied T&E. Because LPSD has received sufficient State aid, plus additional aid in the form of State loans, its inability to provide T&E, taken to its logical conclusion, cannot be a direct result of the SFRA.

This raises a question unanswered — and, in fact, ignored — by Appellants: if it is not a funding issue, then what is causing the District to not provide T&E? As the administrative record and Comprehensive Report reveal, it is the District’s own choices and significant mismanagement of the substantial funds it has received that are at the core of its failure to provide T&E.

While this court reviews constitutional questions de novo, Abbott I, 100 N.J. 298-99, absent a “clear showing” that the agency’s decision is “arbitrary, capricious, or unreasonable, or lacks fair support in the record,” this court must “give substantial deference to the agency’s fact-finding,” Twp. Pharmacy v. Div.

of Med. Assistance & Health Servs., 432 N.J. Super. 273, 284 (App. Div. 2013), and must be “mindful of an administrative agency’s day-to-day role in interpreting statutes within its implementing and enforcing responsibility,” In re State Bd. of Educ.’s Denial of Petition to Adopt Regulations Implementing N.J. High Sch. Voter Registration Law, 422 N.J. Super. 521, 530-31 (App. Div. 2011) (internal quotations omitted).

A. The District’s Ineffective Policies and Extreme Mismanagement Are a Root Cause of its Inability to Provide T&E.

As the record clearly demonstrates, LPSD is plagued by severe mismanagement, which has directly and negatively impacted the level and quality of education district students receive. There are reasons why this court concluded that LPSD has failed to provide its students T&E, Alcantara, 475 N.J. Super. at 70, and they have little to do with the SFRA.

As the Comprehensive Report revealed, LPSD’s inefficient and ineffective policies have had a direct impact on the quality of education district students receive. The District’s curriculum is developed in-house and suffers from a “lack of evidence, research-based, current resources to support the curriculum.” (Ra135). The locally-developed curricular resources are also “not research backed or supported,” and do not fully align with State standards.

(Ra136). And the curriculum is constantly changing, requiring teachers to re-learn new curriculum on a yearly basis. Ibid.

Also, in most districts in the State, students entering kindergarten must turn five-years old by October 1 of that given school year. (Ra135; Ra184-85). But under Policy 5112, LPSD permits students who will not turn five-years old until December 31 to register for kindergarten. (Ra135; Ra184-85). In practice, this means that LPSD kindergarten classes can have students aged four to six years old for nearly half of the school year. (Ra135; Ra185). This age gap is not insignificant: “Studies have shown that in the early stages of school age children development, there is a significant difference in terms of maturity, behavior, and cognitive abilities between children during these stages of development.” (Ra185). These differences in cognitive ability manifest, for example, in gaps in literacy development. Ibid. And these gaps may not be bridged. One study from the National Bureau of Economics found that students “who start school at an older age do better than their younger classmates and have better odds of attending college.” Ibid. Significantly, these gaps can also affect a student’s classification as “the youngest students in a grade cohort are more likely to receive both ADHD diagnoses and special education placements than are the oldest students.” Ibid. At least one study found that “the youngest

students in a kindergarten cohort are 40% more likely to be placed in special education than are the oldest students.” Ibid.

This is particularly problematic in LPSD’s case, because while the District has adopted New Jersey’s MTSS Framework, the support systems are not implemented effectively due to the District’s strict structure and pacing of local curriculum. (Aa12; Ra136; Ra216). Further, school staff reported that LPSD elects to end Tier 3 intervention (individual support) in third grade. (Ra136; Ra216). But, as explained above, because the LPSD’s policies extend the kindergarten cutoff date, many of the District’s third grade students are still developmentally young and continue to struggle in areas such as reading. (Ra136; Ra216). As a result of LPSD’s enrollment policies and without the appropriate tiered support and structured intervention time, students face an ever-growing developmental and educational gap, and the risk that these students will later be identified as special needs increases, (Ra136; Ra216), resulting in higher educational costs and further strain on the District’s budget.

Additionally, most instruction in LPSD’s high school “uses a SMART Board, a District provided PowerPoint and a Chromebook with Google Classroom installed.” (Ra186). In most instances, students do not have traditional textbooks, but instead use digital textbooks or supplemental instructional materials on their district-issued Chromebooks during class time.

Ibid. And in addition to in-class assignments, students are typically assigned homework using personalized Google Classroom accounts. Ibid. In short, technology is a critical component of students' ability to learn and complete assignments. But "many [of LPSD's] high school students . . . do not have a computer in their home," and the District "does not allow students to take home district-purchased devices." Ibid. As a result, students who do not have equitable access to a computer must resort to "using their personal cell phones to complete homework assignments, which may not be conducive to producing quality work," or they just do not complete computer-based assignments. Ibid.

LPSD also requires all teachers to adhere to strict scripts and pacing guidelines for curriculum. (Ra136; Ra207). Because of this, "even if students are struggling, [teachers] have to move on to keep up with the pacing guidelines. There is not time to pause to ensure" that students have comprehended or retained the lesson. (Ra212). This has a profound impact on ELL students where "even though some scripts and instructional frameworks may have suggestions for differentiating [] ELL students, there is no time to incorporate those ideas" as teachers "have to rush through their lessons to ensure they are on track." Ibid. As a result of the mandated adherence to pacing guidelines, as well as constant changes to curriculum, there is "little room for differentiating to support the needs of individual students." (Ra136; Ra203).

These policies directly explain this court’s finding that the “quality of education in Lakewood . . . is deficient.” Alcantara, 475 N.J. Super. at 70. And Appellants do not argue otherwise. In addition to limiting the quality of education students receive, these policies have destroyed educator morale and resulted in “a district-wide culture of low expectations for students across the [LPSD.]” (Ra127; Ra131; Ra192).

Along with the deficiencies in the delivery of education, LPSD is also mismanaged in terms of governance and administration, resulting in inefficient use of funds and a failure to raise necessary capital to provide T&E. This starts at the top, with the Board of Education. Board meetings are conducted without discussion on any agenda items or committee reports, which deprives the public from being fully apprised of the Board’s actions. (Ra134; Ra181). Further, boards of education play an integral role in developing the district’s budget; they are required to adopt a budget which provides T&E. N.J.A.C. 6A:23A-8.1. But despite LPSD’s financial struggles, the Board does not discuss financial issues or budgets during meetings, does not discuss district policies, and does not have a strategic plan in place. (Ra126; Ra173; Ra181-82). Rather, the Board’s “involvement with budget development is minimal,” (Ra183), and Board members were “not entirely familiar with [budget] details.” (Ra184). Also, the Board President has effectively abdicated his role and responsibilities to the

Board's attorney, permitting the Board attorney to control the board's operations. (Ra133; Ra173; Ra180). In turn, LPSD's "legal expenses per pupil are significantly higher than" comparable districts. (Ra127; Ra173; Ra191). In the 2021-2022 school year, LPSD's per pupil legal costs were over four times higher than the next largest comparison districts. (Ra171; Ra191).

To the extent that underfunding is a cause of the lack of T&E in the District, that problem is attributable to LPSD, not the SFRA. The District has failed to take necessary steps to control expenses and contribute to the District's budget. As the Assistant Commissioner explained, the District chose not to exercise its authority under N.J.S.A. 18A:22-40 to "raise its tax levy to the cap from 2011-2014, despite the fact that the community's non-public school population was rapidly increasing." (Aa13). It was not until 2014, when a State monitor was installed, that LPSD was required to increase the levy, but "the decision not to increase the levy during the previous years means that the District [was] not taxing up to its [LFS] and that not only was the District not generating money that it could have been during that time period, but that any additional revenue from increasing the levy would have compounded." (Ra97; Aa13). Because of this, from 2014 to 2018, the District taxed \$31,501,523 less than its LFS — money which could have gone directly to providing T&E to students. (Ra71; Aa13).

LPSD also chose not to avail itself of its power under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 to present voters with a referendum to increase the school tax levy in any year except 2016, when the voters rejected it. (Ra98; Aa13).¹² Appellants downplay the failure to increase the levy under N.J.S.A. 18A:7F-39 by noting that this provision does not allow the funds to be used for T&E. (Ab29). But what Appellants fail to realize is that any additional funds raised could free up other funds that can be directly used for services to ensure T&E; and, as a result of its choices, LPSD's school tax rate was below the State average and below other districts. (Aa13; Ra72).

On top of this conscious decision not to take steps to raise funds, the record also demonstrates severe deficiencies in LPSD's fiscal management. For years, LPSD ignored recommendations by both the Department and OSA for reining in special education and transportation costs, as discussed further below. (Ra77). Also, the 2014 OSA report found that "financial transactions . . . were not always reasonable or properly recorded in the accounting system." (Ra75). The record revealed that LPSD did not have purchase orders in place for students sent to out-of-district placements, (Ra36), and that, in terms of special education costs, "there was a lack of proper approval, tuition documentation, and

¹² The referendum was aimed at raising more than \$6,000,000 to continue LPSD's courtesy busing policy, a non-T&E item. (Ra98; Aa13).

attendance records” for students placed in private schools. (Ra76; Aa15). Further, the New Jersey State Aid Audit Unit “determined that poor record-keeping resulted in [LPSD] incorrectly reporting hundreds of students on its Application for State School Aid (ASSA).” (Aa15; Ra57).

Record-keeping deficiencies continue and were again confirmed by the Comprehensive Report, which found that “[t]here were significant deficiencies noted on the vendor management controls in the procure to pay cycle.” (Ra130; Ra294). Specifically, the Report found that LPSD’s Board of Education is not approving vendors before payment is issued. (Aa15; Ra134). As to transportation, the Report found that many non-public students did not have an identification number in the DRTRS, creating the risk that students might be counted and funded in multiple counties. (Aa15; Ra144; Ra315). And a spot-check of LPSD’s records revealed documents that listed other districts as the contracting unit, which “could indicate a systemic lack of legal, procurement, and financial review and oversight of bid documents.” (Ra315). As a result of the pervasive errors and mismanagement in LPSD’s record-keeping, the District is failing to use its funds efficiently to provide T&E. (Aa15).

For these reasons, “the record demonstrates that [LPSD’s] own choices and management issues have resulted in the unavailability of funds that could and should have been used to provide T&E to its students.” (Aa11-12).

B. The District Has Failed to Take Steps to Reduce Its Special Education Costs.

As this court previously found, a significant portion of LPSD’s school funding is spent on special education. Alcantara, 475 N.J. Super. at 63. But the record demonstrates that the District has not taken steps to reduce its expenditures, despite repeated warnings to do so.

In the 2009 Needs Assessment, the Department found that LPSD “could do significantly more with the funds currently available to it” and “find ways to ensure that its resources are directed to meet the instructional needs of its students.” (Ra74). In terms of special education, the assessment recommended that the District “develop strategies to educate more of its special education students in-district.” Ibid. Five years later, OSA’s audit report found “a lack of proper approval, tuition documents, and attendance records . . . for students placed in unapproved nonpublic schools.” (Ra76). OSA recommended that LPSD address its growing special education costs. Ibid.

But as the ALJ found, the record is devoid of any “evidence of the steps [LPSD] has actually taken to save money by educating more of its special education students in a district-run program.” (Ra100). As outlined above, there were 706 students aged 3-21 in specialized out-of-district placements in 2021-2022, the majority of whom had a primary diagnosis of speech or language

impairment. (Ra254; Ra256). It is “unclear why so many students” with such a disability are not educated in-district, the Report found. (Ra256).

In failing to develop in-district programs, LPSD has not availed itself of opportunities for additional SFRA funding. Under the SFRA, the State provides “extraordinary special education aid” to assist districts with special education costs that exceed \$40,000 per pupil for students educated in in-district programs, and \$55,000 per pupil for students educated in private school settings. N.J.S.A. 18A:7F-55(b). The SFRA also ensures that districts receive a higher rate of reimbursement for those expenses when the children are educated in a public, as opposed to a private, school setting. Ibid. This, the ALJ aptly noted, “is a substantial difference” (Ra101) and one that LPSD has failed to capitalize on.

And even assuming none of its students could have been educated in-district, LPSD could have applied for additional aid based on an unusually high rate of low-incident disabilities. N.J.S.A. 18A:7F-55(g); (Ra101; Aa19). The record does not contain any evidence that LPSD did so, or that it had applied for facilities funding to increase its ability to serve more special education students in-district. (Ra17; Ra99-101; Aa19). Thus, it is LPSD’s own choices that caused what this court described as “abnormal” special education costs, see Alcantara, 475 N.J. Super. at 63, draining critical resources from other programmatic areas which would ensure students receive T&E.

Aside from its failure to educate more students in-district, there is an even deeper-rooted problem when it comes to LPSD's special education obligations: the District has unusually high, and therefore possibly inaccurate, incidence rate of students identified with disabilities. In 2021-2022, the percentage of students aged 5-21 with an IEP was 28.8%. (Ra243). This is nearly 10% higher than the State average, and twice the national average. (Ra243-44). Further, the rate of students in LPSD diagnosed with an intellectual disability is also nearly twice the national rate. (Ra244). Despite this, there is no evidence in the record to suggest that LPSD has sought to identify the cause of this discrepancy.

In fact, it appears that the District has ignored this issue. As noted in the Comprehensive Report, there are questions as to the "eligibility criteria and whether [special education] determinations are accurate." (Ra261). There have also "been cases in which parents believe their children have not properly been evaluated." Ibid. Further, a review of student IEPs revealed that most did not include parental input, or even an indication that such input was sought. (Ra274). Nor did IEPs include information on the student's background, interpretation of the student's evaluations, or how those factors impacted the student academically. Ibid.

And even for special education students educated in-district, LPSD is not providing adequate services to ensure student success. As noted above, the

District requires teachers to adhere to strict pacing guidelines. (Ra136; Ra267). Because of this, teachers are not always able to “meet[] the individual needs of students with IEPs” which “create[s] barriers to individualized learning for students.” (Ra267). The District does not have programming for emotional regulation impairment, visual impairment, or intellectual disabilities in its schools. (Ra129; Ra238; Ra264). Thus, LPSD has effectively abdicated any responsibility in ensuring student identifications and placements are accurate, to the detriment of both the affected students’ education and its own growing expenses.

Lastly, in addition to SFRA funding, districts also receive federal funding for special education through the IDEA Part B. (Ra249). However, the District is unable to use the full amount of its federal funding because it has been found to be significantly disproportionate in its representation of students with disabilities in 2022 and 2023. Ibid. So, LPSD is required to set aside 15% of its IDEA funding for CCEIS. If the number of students with disabilities is not accurate, then its failure to investigate and remedy that problem has the result of taking money away from services to provide T&E. Ibid.

Because LPSD’s own policies and choices inefficiently use its resources and effectively leave students, especially special needs students, behind, the record supports the Assistant Commissioner’s determination that it is LPSD’s

mismanagement rather than the SFRA that is the cause of the District's failure to provide T&E.

C. The District Has Severely Mismanaged Its Transportation Responsibilities, Resulting in Inflated Costs.

Just as with special education, this court also found that transportation comprises a significant strain on LPSD's budget. Alcantara, 475 N.J. Super. at 63. But as the ALJ correctly found, there "is an absence of evidence in the record to indicate that . . . [LPSD] has done everything it can to rein in its transportation costs in order to free up more funds for T&E for its public school students." (Ra100).

In the same 2009 Needs Assessment in which the Department provided recommendations for LPSD to lower its special education costs, the Department also addressed the District's transportation spending. (Ra74). The Assessment noted that the District's courtesy busing policy was contributing to its financial strain. (Aa16; Ra99). LPSD eventually ended its courtesy busing policy, but not until 2016. (Aa16; Ra100). Thus, the District continued to provide transportation to ineligible students, including non-public students, at its own expense — and at the expense of providing T&E to its public school students — for seven years after the Department counseled against continuing this practice. (Ra100; Aa16). To put it in perspective, the cost of courtesy busing totaled

\$4,000,000 in the 2008-2009 school year. (Aa16). Even assuming that number remained consistent from 2008-2009 until LPSD ended its policy in 2016, that is millions of dollars that were available but not used to provide T&E. (Aa16).

In addition to the Needs Assessment, the 2014 OSA audit also highlighted concerns in the District's transportation spending. OSA noted that the majority of the non-public bus routes were segregated by gender, and because most of the private schools had the same start time, "the demand cause[d] increased pricing by vendors." (Ra75). Additionally, each non-public school had separate buses which created longer bus routes and required more buses at an increased cost. Ibid. And most non-public schools had multiple starting and end times which "creates inefficiencies and the need for one-way routes." (Ra76). By separately tiering the starting and ending times, OSA found that the District could save up to \$6,700,000. (Ra75). And if bus routes were developed by school location rather than having separate buses for each non-public school, OSA found the District could save approximately \$750,000. Ibid. There is no evidence in the record showing that LPSD took any steps in response to the OSA's findings.

These are not just issues of the past; rather, the Comprehensive Report shows that similar issues persist in the District. Specifically, the Comprehensive Report found that for students transported by LPSD, buses run less full and that costs per student are higher. (Aa17; Ra143; Ra310-11). The Report also found

that in some cases, buses were being used for multiple routes, but the routes are bid on as stand-alone routes. (Ra310-11). Similar to the OSA audit, the Report found the District could save on transportation costs by soliciting bids on pre-packed groups of routes based on historical busing patterns, and could double or triple tier routes in order to decrease expenses. (Ra311).

The Comprehensive Report also found potential mismanagement and lack of internal controls of the District's transportation operations. In regards to the LSTA, the Comprehensive Report indicated that there was insufficient separation between LPSD as a contracting agency, and the LSTA as a vendor. (Aa17). And at least one employee may have been employed by both the District and the LSTA, creating "potential for procurement issues, diminished incentive to return saved funds to [LPSD,] and potential for conflicts in contract oversight of the LSTA as a vendor, in addition to the duplication of salary." (Aa17; Ra144; Ra312-13). Furthermore, many non-public students do not have an identification number in the DRTRS, creating the risk that students might be counted and funded in multiple counties. (Aa15; Ra144; Ra315). As such, the record reveals that it is LPSD's own choices and inefficiencies which have caused its transportation costs to run out of control and reach the "unsustainable imbalance" noted by this court. Alcantara, 475 N.J. Super. at 63.

The record thus supports the Assistant Commissioner's conclusion that the SFRA is not a significant cause of LPSD's failure to provide its students T&E. Rather, "[t]he pervasive inefficiencies, deficiencies, and the apparent shortfall in oversight and strategic systemic action by [LPSD] have culminated in this inadequacy." (Ra124). The Assistant Commissioner's decision should therefore be affirmed because the SFRA is not unconstitutional as applied to LPSD.

Irrespective of this appeal, the Department recognizes the State's constitutional duty to address the lack of T&E in the District, and is continuing to take steps to remedy that situation. This includes ensuring the District has sufficient funds to meet its immediate needs, moving to install a new State monitor,¹³ and exploring the degree of oversight and intervention that may be necessary to protect the constitutional rights of LPSD's public-school students.

¹³ While Appellants point to the fact that a State-appointed monitor has been in place in LPSD, the monitor's authority is not so great as to be able to unilaterally address all of the issues identified in the District. Furthermore, as the Comprehensive Report found, the LPSD Board of Education essentially operates in secret, failing to discuss any policies or the budget during meetings. (Ra134; Ra181). For this reason, it is unclear what extent the monitor was even fully apprised of LPSD's many failings, or had the tools to fix the issues. Regardless of what past monitors did or did not know, the Department will be installing a new monitor.

CONCLUSION

For these reasons, the Assistant Commissioner's decision finding the SFRA is not unconstitutional as-applied to LPSD should be affirmed.

Respectfully submitted,

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