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January 30, 2015

Via Regular Mail and Fax to (609) 689-4100

Hon. John S. Kennedy, A.L.J.  
Office of Administrative Law  
9 Quakerbridge Plaza  
P.O. Box 049  
Trenton, NJ 08625-0049

Re: 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; and Ira Schulman individually and as Guardian ad Litem for A.S. v. David Hesse, Comm'r of the N.J. Dep't of Educ.; the N.J. State Bd. of Educ.; and the N.J. Dep't of Educ.  
Agency Reference No.: 156-6/14  
Docket No.: EDU 11069-2014S

Dear Judge Kennedy:

Please accept this letter in lieu of a more formal brief on behalf of Respondents the Commissioner of Education ("Commissioner"), the Department of Education ("Department"), and the State Board of Education (collectively "State Respondents") in response to Mr. Paul Tractenberg's motion, pursuant to N.J.A.C. 1:1-16.6, for leave to participate



personally in this matter as amicus curiae. The motion should be denied as Mr. Tractenberg does not satisfy the requirements for participation.

Non-parties may move to participate only if they have a "significant interest in the outcome of a case." N.J.A.C. 1:1-16.6(a). Importantly, "interest" as used in the rule, requires that the movant have some cognizable stake in the claim. In Canal Street Pub v. City of Paterson, 6 N.J.A.R. 221 (1982), the State Division of Alcoholic Beverage Control ("ABC") was allowed to participate in a case involving a bar's potential loss of a liquor license for exhibiting nude dancers. In Union County Educational Services Commission v. Westfield Board of Education, OAL Dkt. No.: EDU 07522-2006N, Init. Dec. (August 2, 2006), two Westfield residents were permitted to participate in an action seeking to compel the lease of a Westfield school building to the Union County Educational Services Commission.

Both cases cited above lack analysis of the respective motions to participate, but the significant interest of the entities permitted to participate is readily apparent. In the first, the ABC clearly has a significant interest in an action against the holder of a liquor license. Similarly, community residents may have a cognizable interest in seeing that their local board of education is not compelled to grant an unfavorable lease. Here, however, Mr. Tractenberg asserts no

actual legal interest or stake in the outcome of this matter, and therefore does not demonstrate that he meets the requirements for participation under N.J.A.C. 1:1-16.6(a).

In deciding whether to permit a non-party's participation, the ALJ must also consider "whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion." N.J.A.C. 1:1-16.6(b). Here, Mr. Tractenberg offers his participation to the court on the basis that he has expertise arising from his involvement in the Robinson and Abbott cases. However, Petitioners' claims are not akin to those raised in the Robinson and Abbott cases. Rather than raising a facial challenge to the funding formula enacted by the Legislature, as occurred in the Robinson and Abbott cases, Petitioners are challenging the State funding formula as applied to Lakewood specifically. Mr. Tractenberg's prior experience with the Robinson and Abbott cases does not appear to include substantial knowledge as to the particularized and unique circumstances present in Lakewood. Rather than assist the court, Mr. Tractenberg's participation has the potential to confuse his goals for this litigation with the court's consideration of Petitioners' claims.

In sum, Mr. Tractenberg has failed to demonstrate that he has the requisite stake in Petitioners' claims to demonstrate the type of significant interest contemplated by N.J.A.C. 1:1-

16.6. And given the unique nature of Petitioner's claims, Mr. Tractenberg's participation is not likely to add constructively to resolution of the case. Therefore, his motion to participate should be denied.

Respectfully Submitted,

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

Geoffrey N. Stark  
Deputy Attorney General  
N.J. Attorney I.D. No.: 01811-2010

cc: Arthur H. Lang, Esq. (via regular mail and email to lakewoodlaw@gmail.com)  
Paul L. Tractenberg, Esq. (via regular mail and fax to (973) 353-1445)

JOHN J. HOFFMAN  
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By: Geoffrey N. Stark  
Deputy Attorney General  
(609)777-4861

STATE OF NEW JERSEY  
BEFORE THE COMMISSIONER OF  
EDUCATION  
Agency #156-6/14

LEONOR ALCANTARA, individually :  
and as Guardian ad Litem for :  
E.A.; JUANA PEREZ, individually :  
and as Guardian ad Litem for : CIVIL ACTION  
Y.P.; TATIANA ESCOBAR; LESLIE :  
JOHNSON, individually and as :  
Guardian ad Litem for D.J.; :  
and IRA SCHULMAN, individually : CERTIFICATION OF SERVICE  
and as Guardian ad Litem for :  
A.S., :  
:  
Petitioners, :  
:  
v. :  
:  
DAVID HESPE, COMMISSIONER OF :  
EDUCATION, NEW JERSEY STATE :  
BOARD OF EDUCATION AND NEW :  
JERSEY DEPARTMENT OF EDUCATION, :  
:  
Respondents. :

I, PATRICIA A. COLLINS, hereby certify as follows:

1. I am a Legal Secretary in the Division of Law, Department of Law and Public Safety, State of New Jersey.
2. On January 30, 2015, at the direction of Geoffrey N. Stark, Deputy Attorney General, I served two copies of a Letter

Brief on Behalf of Respondent in the above captioned matter via regular mail to:

Arthur Lang, Esq.  
918 East Kennedy Blvd.  
Lakewood, New Jersey 08701

Paul L. Tractenberg, Esq.  
Rutgers School of Law  
S.I. Newhouse Ctr. For Law and Justice  
123 Washington Street  
Newark, New Jersey 07102

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
PATRICIA A. COLLINS

DATED: 11/30/15

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DATE: 1/30/15

TELECOPIED TO:

FAX NO:

Hon. John S. Kennedy, ALJ  
Paul L. Tractenberg, Esq.

609-689-4100  
973-353-1445

FROM: Geoffrey N. Stark, DAG

MESSAGE: Please refer to attached letter brief re:  
Lionor Alcantara, et al. v. David Hespe, et al.  
OAL # EDU 11069-2014 S