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Attorney for Petitioners

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)
for A.S.)
)
Plaintiffs,)
)
v.)
)
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)

Petitioners Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P., and as Guardian ad Litem for B.A.; Allen Schulman, individually and as Guardian ad Litem for A.S.; and Maximo Galeana, individually and as Guardian ad Litem for I.G.M., and as Guardian ad Litem for Y.G.; by and through their attorney, Arthur H. Lang, Esq., hereby requests the Commissioner of Education to consider a controversy which has arisen between the petitioners and the respondents whose

address is the New Jersey Department of Education, P.O. Box 500, Trenton, NJ 08625-0500, pursuant to the authority of the Commissioner to hear and determine controversies under the school laws (N.J.S.A. 18A:6-9), by reason of the following facts:

1. Petitioner public school students of the Lakewood School District (hereinafter "LSD") are constitutionally entitled, as are all New Jersey public school students, to a "thorough and efficient" education (hereinafter "T&E") pursuant to the education clause of the New Jersey Constitution, which reads as follows:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years. N.J. Const. art. VIII, § 4, ¶ 1 (hereinafter "T&E Clause").

2. The State is ultimately responsible for assuring that the petitioners' constitutional education rights are provided them. The "ultimate responsibility for a thorough and efficient education was imposed upon the State." Robinson v. Cahill, 62 N.J. 473, 508-09 (1973). "The Commissioner and the [State] Board are charged with the responsibility for

achieving the constitutional mandate." Abbott by Abbott v. Burke, 119 N.J. 287, 349 (1990).

3. The Commissioner and State Board of Education have broad powers and duties to monitor and enforce the State's education system and to assure that students, including the petitioners, are receiving a T&E education.

4. As the T&E Clause itself and the judicial interpretations by the New Jersey Supreme Court in *Robinson* and *Abbott* and many other decisions make explicit, the Legislature must appropriate the necessary funds.

5. The School Funding Reform Act of 2008, as recently amended (hereinafter "SFRA"), is the legislative vehicle for doing so on a statewide basis and it was found constitutional in *Abbott XX*.

6. SFRA provides for an adequacy budget amount that constitutes the primary metric for determining whether a district's students have sufficient funding for them to receive a T&E education.

7. Because of the Township of Lakewood's unique demographic makeup, with almost 85% of its school-age residents attending non-public schools as compared to the statewide average of about 10%, the education afforded the public school students

of LSD is supported by substantially less than SFRA's adequacy budget level of funding.

8. The costs of providing for mandatory transportation and special education services required by Lakewood's approximately 31,000 nonpublic school students come mainly from the LSD budget and consume about 40% of the entire budget.

9. This nondiscretionary diversion of funds from the petitioners and their fellow LSD public school students, totaling about 6,000, to provide the total population of 37,000 school age students with mandatory transportation and with a Free and Appropriate Public Education (hereinafter "FAPE") for the most severely handicapped children pursuant to the United States Constitution and federal law has resulted in available funding for LSD's public schools falling about 40% below SFRA's adequacy budget.

10. T&E cannot rationally be provided under provisions of the SFRA designed for 6,000 children in LSD when in reality the district is mandated to serve a resident population over six times larger. "No amount of administrative skill will redress this deficiency and disparity--and its cause is not mismanagement." 119 N.J. at 391.

11. State monitors have been in LSD for more than four years and have responsibility for assuring that the district's spending is appropriate and efficient.

12. One of the monitors, Michael Azzara, stated at a public meeting of the LSD board of education that the district's problem was a revenue problem rather than a spending problem.

13. The Commissioner of Education and the State Treasurer have formally recognized for each of the past four school years that SFRA funding is inadequate to provide LSD public school students with a T&E education by providing, in dramatically increasing amounts, "advance state aid" or "emergency loans."

14. The statutory basis for such advance state aid is NJSA 18A:7A-56. Under that provision, applicable only to districts with a state monitor, "[t]he commissioner's recommendation shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education." Thus, by recommending advance state aid for four consecutive years, the commissioner is acknowledging that funding generated for LSD by SFRA is insufficient to provide LSD public school students with a T&E education.

15. For the current school year, the amount of this extraordinary advance state aid has risen dramatically to \$28,182,090, bringing the four-year total to \$46,844,951.

16. This annual discretionary advance state aid is insufficient to assure LSD public students a T&E education, however, because:

- a. The satisfaction of the petitioners' constitutional right to a T&E education cannot depend upon periodic discretionary action by the executive branch;
- b. The statute pursuant to which such advance aid is provided states explicitly that "[the] advance state aid payment shall be repaid by the school district through automatic reductions in the State aid provided in subsequent years," apparently without regard to whether or not the school district's financial situation can be expected to improve in subsequent years;
- c. The fiscal situation of LSD will worsen rather than improve over subsequent years because:
 - i. Demographic trends indicate that the nonpublic school student population will grow faster than the public school student population, thereby increasing the drain on the LSD budget for mandatory transportation and special education services for nonpublic or otherwise nonpublic students (opting for FAPE); and

- ii. The recent statutory amendment to SFRA (P.L. 2018, c. 67) has already begun to reduce state aid payments to LSD; and
- iii. The amount of advance state aid to LSD, even the current year's \$28,182,090, has not enabled the district to maintain existing curricular and extra-curricular programs, let alone restore programs provided previously.

17. Due to the uncertain and inadequate stream of funding available to LSD for at least the past four school years, the LSD superintendent has been forced to send out annually increasing numbers of Reduction in Force (RIF) letters to district teachers and to accept increasing numbers of teacher resignations. For example, in 2016-17 she sent out 140 RIF letters and lost 78 teachers to resignations. (T2 23-7 to 12).

18. Replacing the many teachers who have chosen to resign each year due to the fiscal instability and the RIFs has resulted in many educational dislocations and increased LSD costs for such items as professional development (T2 68-16 to 18).

19. As indicated above, the recent amendment to SFRA already has led to a further deterioration of LSD's financial situation. LSD's school aid for 2018-19 was reduced in the FY 2019 Appropriations Act from the previously budgeted school

aid amount of \$25,032,282 to \$23,465,461, a decrease of \$1,566,821.

20. As a consequence, the funds available to LSD for 2018-2019 will fall substantially below the district's statutory adequacy budget level *even before Lakewood's unique circumstances are considered.*

21. The educational problems of LSD's public school students are exacerbated by the fact that 91% are low-income (T2 45-9 to 19), 25% are classified as Limited English Proficiency (T2 40-18 to 19), 86% are Hispanic and 8.1% are African-American. (T2 123-18 to 23).

22. The "measurement of the constitutional requirement must account for the needs of the students. . . ." 119 N.J at 319. The district cannot **thoroughly** remedy educational or systemic deficiencies, nor can it make **efficient** and responsible interventions and programmatic choices, nor can any organization reasonably plan for the future, knowing that its stream of revenue becomes more insufficient with each passing year and that it must rely on even larger loans just to maintain its present levels of curriculum and support. This is particularly troublesome given the vast number of disadvantaged students in LSD. "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. . . ." 119 N.J. at 374.

23. Not surprisingly given its fiscal plight compounded by its unique demographics, by virtually every input and outcome measure used by the State to evaluate school districts, LSD falls below every comparison group including the lowest DFG grouping.

24. As soon as possible, the State must implement a constitutionally sufficient and permanent solution to LSD's well-documented educational and fiscal problems. Continuing the current insufficient, patchwork and annually discretionary approach will only exacerbate the constitutional violation and make the ultimate cure more costly. It also will consign more and more LSD public school students to the lifetime consequences of having received a constitutionally inadequate public education.

25. To the extent that legislative action is necessary to vindicate the LSD public school students' constitutional rights, as it certainly will be, the commissioner and state board of education have their own constitutional obligations to serve as the advocates for those students. That means they must use their expertise to identify precisely what legislative action is required and they must champion that

cause. Anything less than that would be a "flat disavowal of power despite the compelling circumstances [and] may be sharply contrasted with the sweep of our pertinent constitutional and statutory provisions and the tenor of our earlier judicial holdings." Jenkins v. Tp. of Morris School Dist. and Bd. of Ed. 58 N.J. 483, 493 (1971).

WHEREFORE, Plaintiffs petition the Commissioner to determine:

- 1) That the SFRA as applied to the Lakewood School District does not provide sufficient funding to enable the school district to deliver the core curriculum content standards and extracurricular and cocurricular activities necessary for a thorough and efficient education.
- 2) That the consequential reliance upon discretionary advance state aid payments pursuant to 18A:7A-56 to provide funding for a thorough and efficient education does not provide T&E funding in any given school year that is certain and predictable.
- 3) That the constitutional imperative regarding a thorough and efficient education requires sufficient funding that is not discretionary.
- 4) That the Commissioner recommends that this matter be remedied by the Legislature.

Respectfully Submitted,

Arthur H. Lang

Arthur H. Lang

Attorney for Petitioners

Dated: September 4, 2018