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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3693-20

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.,

APPROVED FOR PUBLICATION

March 6, 2023

APPELLATE DIVISION

Petitioners-Appellants,

v.

ANGELICA ALLEN-MCMILLAN,
ACTING COMMISSIONER
OF THE NEW JERSEY
DEPARTMENT OF EDUCATION,
NEW JERSEY STATE BOARD
OF EDUCATION, and NEW
JERSEY DEPARTMENT OF
EDUCATION,

Respondents-Respondents.

Argued January 17, 2023 – Decided March 6, 2023

Before Judges Whipple, Mawla, and Smith.

On appeal from the New Jersey Commissioner of
Education, Docket No. 156-6/14.

Arthur H. Lang and Paul L. Tractenberg argued the cause for appellants.

Matthew J. Lynch, Deputy Attorney General, argued the cause for respondents (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Sydney Finkelstein, Deputy Attorney General, on the brief).

The opinion of the court was delivered by

WHIPPLE, J.S.C.

Appellants, parents of children enrolled in the Lakewood Public School District (Lakewood, or District), filed a petition alleging the District was not providing its public-school students a thorough and efficient education (T&E) as required by our State's Constitution. N.J. Const. art. VIII, § 4, ¶ 1. Appellants contend this is due to the failure of the New Jersey Department of Education (DOE) to adequately fund the District. To that end, they assert the School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to -70, which sets certain standards for the DOE, is unconstitutional as applied to Lakewood.

Administrative Law Judge (ALJ) Susan Scarola initially considered the case. After the development of a thorough record, she determined while the District was indeed failing to provide T&E, this failure was due to local mismanagement and other factors, not because of a constitutional defect in the SFRA. She denied appellants' relief on this basis.

Appellants petitioned the New Jersey Commissioner of Education (Commissioner) for review. The then acting Commissioner rejected the ALJ's conclusion the District had failed to provide an adequate education to its students, and therefore, because it found the District was providing T&E, did not reach the issue of constitutionality of the SFRA. She denied relief.

This appeal followed.

I.

The record demonstrates Lakewood's school district is in a unique and precarious position. This is due, in large part, to demographic trends in the area. Lakewood Township has seen a population rise in recent decades, due in large part to a thriving Orthodox Jewish community. As a result of this demographic shift, the township has approximately 37,000 school-aged children, however, only about 6,000 are enrolled in the secular public schools.¹ The majority—84%—are enrolled in private religious schools. Testimony before the ALJ established that this demographic trend is likely to continue and accelerate.

As a result, Lakewood is an outlier amongst other New Jersey school districts, in which most of the students are enrolled in public schools. The

¹ Demographically, 8.1% of the District's students are Black and 86% are Latino. The entire student body is eligible for free or reduced-price lunches based on household income. The District has a high percentage of students who speak English as a second language.

non-public school students in Lakewood alone constitute nearly a quarter of all such students in our state.

Like other districts, Lakewood's state-issued school aid is calculated based upon its 6,000 enrolled public-school students. However, Lakewood's education budget has been severely strained by its obligation to provide transportation and special education tuition to many of the 31,000 non-public school students not included in its aid calculation. The record developed before the ALJ is extensive, but the key takeaway is this: the total budget for the most recent school year at the time of that decision was \$143.45 million. Of that, over half—\$78 million—went to transportation and special education tuition for non-public students. This is an abnormal and unsustainable imbalance. By way of comparison, in neighboring districts, the costs of transportation and special needs tuition accounted for roughly four to seven percent of their annual education budgets.

The ALJ concluded the impact of this funding discrepancy on Lakewood's public schools was substantial. Lakewood had difficulty hiring and retaining teachers and other instructional aides. Classroom instructional salaries were the second lowest in the state on a per-pupil basis. A preschool program, which had been recommended in a 2009 needs assessment, was never implemented.

Student performance was also depressed. Test scores from 2014-15 indicated that only twenty-three percent of high school students met or exceeded expectations on the PARCC assessment for English, whereas only five percent met that threshold in math. Only six percent of district students scored above 1550 on the SAT, compared to forty-three percent of students statewide, placing Lakewood in the thirteenth percentile of all districts. While the ALJ noted scores did show improvement in the years that followed, overall scores remained low, far below state averages or targets. Also, between 2014 and 2019, absenteeism and dropout rates were very high, though again, a trend of improvement was borne out by the data.

Faced with this picture, the ALJ found the District was failing its students to a degree that offended the basic guarantees of our State Constitution. The Commissioner, however, rejected this finding. She reasoned that "[w]hile Lakewood's standardized test scores [and other metrics] are below the [s]tate average, they have shown consistent improvement" and therefore lacked constitutional defect.

II.

We consider whether the Commissioner erred in finding, contrary to the ALJ, the District had provided a constitutionally sound education to its students.

We begin with our standard of review. On appeal, our role in reviewing an administrative action is limited to three inquiries: (1) whether the agency's action violates express or implied legislative policies—i.e. the law; (2) whether the record contains substantial evidence to support the agency's findings; and (3) whether the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing In re Stallworth, 208 N.J. 182, 194 (2011)). If the agency has satisfied these criteria, then "substantial deference" is owed, even if we would have reached a different result in the first instance. In re Herrmann, 192 N.J. 19, 28 (2007). Additionally, decisions "made by an administrative agency entrusted to apply and enforce a statutory scheme" are reviewed "under an enhanced deferential standard." E. Bay Drywall, LLC v. Dep't of Lab. & Workforce Dev., 251 N.J. 477, 493 (2022) (citing Hargrove v. Sleepy's, LLC, 220 N.J. 289, 301-02 (2015)).

With this deference in mind, we first observe that our Constitution requires the State provide "a thorough and efficient system of free public schools for the instruction of all the children . . . between the ages of five and eighteen years." N.J. Const. art. VIII, §4, ¶1. To achieve this mandate, the Legislature has passed various funding statutes and delegated certain powers to

the DOE and local school boards. Robinson v. Cahill, 69 N.J. 449, 458 (1976). "[W]hat a thorough and efficient education consists of is a continually changing concept." Abbott by Abbott v. Burke, 119 N.J. 287, 303 (1990) (Abbott II). Generally, however, a thorough and efficient education requires "a certain level of educational opportunity, a minimum level, that will equip the student to become 'a citizen and . . . a competitor in the labor market.'" Id. at 306 (alteration in original) (quoting Robinson v. Cahill, 62 N.J. 473, 515 (1973)).

To determine this baseline level of education, the New Jersey Student Learning Standards (NJSLS) measure T&E pursuant to N.J.S.A. 18A:7F-46² and serve as a basis for the evaluation of school districts. In Abbott XXI, our Supreme Court observed that standardized tests generally measure whether students are meeting certain minimum educational thresholds—and thereby, aid in determining whether a district is providing T&E. 206 N.J. at 424-26.

² Pursuant to N.J.S.A. 18A:7F-46, the State Board of Education must create core curriculum content standards (CCCS) aimed at ensuring that all children are "provided the educational opportunity needed to equip them for the role of citizen and labor market competitor[.]" and these standards establish what is necessary to achieve T&E. The CCCS "describe the knowledge and skills all New Jersey students are expected to acquire" Abbott ex rel. Abbott v. Burke, 206 N.J. 332, 471 (2011) (Abbott XXI) (Albin, J., concurring); N.J.A.C. 6A:8-1.3. These standards comprise nine academic areas: "English language arts; mathematics; visual and performing arts; comprehensive health and physical education; science; social studies; world languages; technology; and 21st century life and careers." N.J.A.C. 6A:8-1.1(a)(1).

Districts are also evaluated pursuant to the New Jersey Quality Single Accountability Continuum (NJQSAC). N.J.S.A. 18A:7A-10. NJQSAC assesses a school district's performance in five areas: "instruction and program [(most relevant to the T&E inquiry)]; personnel; fiscal management; operations; and governance." Ibid. Notably, the statute requires review of a "district's performance over time, to the extent feasible." Ibid.

Despite this extensive legislative background, there is no bright line rule for determining whether a district is providing T&E. However, given the fact the DOE is charged with carrying out this statutory scheme, we remain "mindful of an administrative agency's day-to-day role in interpreting statutes 'within its implementing and enforcing responsibility.'"³ In re State Bd. of Educ.'s Denial of Petition to Adopt Reguls. Implementing N.J. High Sch. Voter Registration L., 422 N.J. Super. 521, 530-31 (App. Div. 2011) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)).

Additionally, N.J.A.C. 1:1-18.6(b)-(d) provides us with explicit guidance for how to evaluate situations where a commissioner rejects the findings of an ALJ:

³ We do not substitute our judgment for that of an agency head and we defer to an agency's interpretation of its enabling legislation. Herrmann, 192 N.J. at 28; City of Newark v. Nat. Res. Council in Dep't of Env't. Prot., 82 N.J. 530, 539 (1980).

[T]he agency head may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony [so long as a final decision] rejecting or modifying the findings of fact in an initial decision [is] based on substantial evidence in the record and [states] with particularity the reasons for rejecting the findings

In finding the District's students were not receiving T&E, the ALJ focused on credible evidence in the record that Lakewood's test scores were well below state averages, and students fared poorly on performance in English and math. She also observed low rates of graduation and college enrollment, as well as high rates of chronic absenteeism. Moreover, while the District offered courses in AP English and Spanish, as well as art and technology, the ALJ noted the programs in industrial arts and auto mechanics had been recently cut. Finally, she noted the only foreign language study offered in-district was Spanish, despite a high rate of Spanish literacy within the student body to begin with.

However, when the Commissioner interpreted this same evidence, she saw a glass half full. Test scores and other metrics were low but trending higher. The District had cut some programs, but still provided certain AP classes, art and music programs, and courses in computer and library skills. Other language courses besides Spanish were available to students online. Lakewood had met various accountability targets under the Federal "Every

Student Succeeds Act" (ESSA),⁴ except for the middle school. On this basis, the Commissioner rejected the ALJ's determination and instead concluded Lakewood's students were receiving T&E.⁵

When faced with a review of the determinations of state agencies, particularly when operating within their areas of expertise, our deference to an agency's opinion is well established and generally desirable. However, an agency's determination cannot be sustained if it "lacks fair support in the record." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (emphasis added) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). Based on our review, we conclude the record generated before the ALJ cannot fairly be said to support a finding Lakewood's students are receiving a constitutionally sound education. The Commissioner owed appellants a thorough review of their substantive argument: the funding structure of the SFRA was unconstitutional as applied to Lakewood's unique demographic situation.

III.

In determining Lakewood's students were receiving a constitutionally adequate education, the Commissioner made essentially three arguments.

⁴ Pub. L. No. 114-95, 129 Stat. 1802 (2015).

⁵ Notwithstanding her conclusion, the Commissioner ordered a comprehensive review pursuant to N.J.S.A. 18A:7A-11 to determine how the District could improve its educational program.

First, she asserted there was a positive trend of improvement in the school's testing averages. Second, while acknowledging cuts to various educational programs at the district, she observed the District still offered "all the courses required for graduation[,] " as well as five AP classes, music programs, and research skills courses. Third, while she acknowledged a "high rate of teacher turnover" and a high student-teacher ratio, she claimed Lakewood met various federal targets under the ESSA (with exceptions).

As legal support for her conclusion, she compared the above observations with the conditions described in Abbott II, a case concerning stark physical deficiencies in school facilities—students being taught in coal bins, eating lunch in the corridor, and using bathrooms without hot water. 119 N.J. at 363. In the Commissioner's estimation, because Lakewood lacked these desperate conditions, the quality of education it provided remained constitutionally sound.

The Commissioner's reliance on this aspect of Abbott II does not address the problem in Lakewood. Abbott II does not hold that all a school district must do to remain constitutionally compliant is provide adequate physical facilities. Instead, Abbott II observed "a thorough and efficient education requires a certain level of educational opportunity, a minimum level [which] . . . should[] be defined in terms of substantive educational content." Id. at

306-07 (citing Robinson, 62 N.J. at 515). Furthermore, "a thorough and efficient education requires such level of education as will enable all students to function as citizens and workers in the same society" Id. at 374.

The question is not whether Lakewood's public schools are direct physical analogues of the unacceptable conditions observed in a school over thirty-three years ago. Instead, it is whether, substantively, the District is failing to provide its students with a minimum level of educational content and opportunity as required by our Constitution today. Because we conclude the Commissioner used the wrong standard in making her factual determination, we instead evaluate whether there exists support in the record for the agency's conclusion under the correct standard. Allstars, 234 N.J. at 157.

IV.

We turn to the record to search for that support. In doing so, we review the DOE's own statistics, comparing the performance of Lakewood's public-school students to state averages. Because data pertaining to a number of school years between 2015 and 2018 is contained in the record, the numbers that follow are generally the most favorable to the Commissioner's argument and paint the District's performance in the best possible light.

First, the most basic analysis. New Jersey's average high school graduation rate was approximately ninety percent for the years in question.

Lakewood's best year had a graduation rate of eighty-two percent. In other words, in the best year on record at Lakewood, nearly one in five students did not graduate, whereas statewide the rate is one in ten. During the other years in the record, Lakewood's rate is approximately one in four. As to what opportunities await the students who do graduate: the statewide average for enrollment in post-secondary education is approximately seventy-three percent. Lakewood has about half this enrollment, at thirty-six percent.

A review of standardized testing paints an even more concerning picture. The record contains a summation of test scores on over eighteen subjects, including English Language Arts, Math, Algebra, and Geometry. Generally speaking, the statewide averages for most subjects hover somewhere around fifty percent. In no subject, during any year contained in the record, did Lakewood's students score above a forty-one percent proficiency rate.⁶ Aside from a single outlier, in every testing category, for all years in the record, there was a deficit of nearly ten percentage points between the averages. Discrepancies of thirty points or more are common.

Furthermore, this testing data does not provide uniform support for the Commissioner's assertion that the scores have shown "consistent

⁶ For example, the proficiency rate for geometry—a particularly difficult subject, according to the data—shows that in 2018, the statewide average proficiency rate was thirty percent. Lakewood's was 3.4%.

improvement." Instead, four of the eighteen subjects demonstrate a decline in scores over the four years tested. Other subjects only increased their proficiency by a point or two, and generally remain over twenty points behind the state averages.

On a deeper level, the record demonstrates a conceptual problem with using a positive statistical trend as primary support for a conclusion that a school district is providing a quality education. A high school with a one percent graduation rate one year and a two percent rate the next has shown remarkable statistical improvement—a 100% increase—but no one could seriously contend the school provides a thorough and efficient education. Of course, the situation in Lakewood is more nuanced than this hypothetical, but given the overwhelming statistics showing the District to be consistently and significantly underperforming in essentially every academic metric, the Commissioner's reliance on a perceived positive trend—alone—cannot adequately support her rejection of the ALJ's contrary determination.

The other reasons cited by the Commissioner—listing the District's course offerings and lauding Lakewood for (mostly) meeting federal accountability targets—are not significant enough to overcome this deficiency. A course offering means little if the course itself is ineffective. The above data supports the argument the quality of education in Lakewood, even in core,

non-elective areas, is deficient. The existence of other course offerings fails to address these issues.⁷


Finally, the ESSA is Federal legislation, which has no direct bearing as to whether Lakewood is performing to the standard required by our State's Constitution.

V.

For these reasons, we reverse and remand, with instructions for the agency to consider the substantive arguments pertaining to the SFRA in light of our Supreme Court's directive in Abbott ex rel. Abbott v. Burke (Abbott XX), 199 N.J. 140, 146 (2009): the State has a continuing obligation to "keep SFRA operating at its optimal level . . ." and "[t]here should be no doubt that we would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge."

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

⁷ For example, the fact the District offers a selection of AP classes means little if, as in Lakewood, only 2.6% of students score above a three on the AP exam, as compared to over twenty percent statewide.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

**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; HENRY MORO AND
IRA SCHULMAN INDIVIDUALLY AND
AS GUARDIAN AD LITEM FOR A.S.,¹**

Petitioners,

v.

**DAVID HESPE, COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
EDUCATION²; THE NEW JERSEY STATE
BOARD OF EDUCATION; AND THE NEW
JERSEY DEPARTMENT OF EDUCATION,**

Respondents.

¹ Counsel for petitioners advised that petitioners included a student and parents of students who attend the Lakewood Township public schools and a parent of a nonpublic school student in Lakewood Township. At some point, Moro and Johnson appear to have withdrawn from the action.

² In 2017, Commissioner Hespe was succeeded by Commissioner Kimberly Harrington; in 2018, she was succeeded by Commissioner Lamont Repollet; on July 1, 2020, he was succeeded by Acting Commissioner Kevin Dehmer; and finally, on October 20, 2020, he was succeeded by current Acting Commissioner Dr. Angelica Allen-McMillan.

Arthur Lang,³ Esq., and **Daniel L. Grossman**,⁴ Esq., appearing for petitioners

Jennifer Hoff, Lori Prapas,⁵ **Lauren Jensen, Geoffrey N. Stark, and Sydney Finkelstein**, Deputy Attorneys General, appearing for respondents (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Michael Inzelbuch, Esq., appearing for participant Lakewood Township Board of Education

Paul L. Tractenberg, Esq., appearing as a participant

Record Closed: November 28, 2019

Decided: March 1, 2021

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioners, who included parents of children who attend Lakewood Township's public schools, filed a petition of appeal against respondents Commissioner of Education, the New Jersey Department of Education (DOE), and the New Jersey State Board of Education (collectively respondents), in which they allege that the funding formula under the School Funding Reform Act, N.J.S.A. 18A:7F-43 to -70 (SFRA), is unconstitutional as applied to Lakewood Township's (Township) public school students, such that the Lakewood Board of Education (Lakewood, BOE or district)⁶ does not receive sufficient funding under the SFRA to provide its public school students with a thorough and efficient education (T&E) because the SFRA does not take into account the extraordinary costs

³ Mr. Lang is also a teacher in the Lakewood public school district.

⁴ Mr. Grossman, who was assisting Mr. Lang, was permitted to withdraw as co-counsel on January 10, 2019.

⁵ Ms. Prapas participated in the hearing but, sadly, passed away before the completion of this matter.

⁶ The Lakewood Township Board of Education and the Lakewood school district are referred to as Lakewood, BOE or district; the geographic entity of Lakewood Township is specifically referred to as Lakewood Township or Township.

that the district incurs to provide transportation and special education services to a large number of students who attend private schools.

Respondents contend that Lakewood's students are, in fact, receiving T&E, as measured by the New Jersey Student Learning Standards; that respondents have, over the years, taken extraordinary actions, including the appointment of State monitors in Lakewood and the provision of advance State aid payments to Lakewood to ensure that the district's students receive T&E; and that the district's financial difficulties are due to reasons other than the SFRA.

The issue is whether the children who attend public school in the district are receiving a constitutionally-required T&E and, if not, whether the reason for such deprivation is, in significant part, because the district receives insufficient funding under the SFRA to deliver T&E to its students. The school years at issue are 2014-2015 through 2018-2019.

PROCEDURAL HISTORY

The original Petition of Appeal was filed with the Commissioner on June 24, 2014.⁷

On September 2, 2014, the respondents filed a motion to dismiss in lieu of an answer. The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 4, 2014, as a contested case.⁸ N.J.S.A. 52:14B-

⁷ The petition asked the Commissioner for a declaratory ruling that all of Lakewood's students are entitled to the same services to which students similarly situated elsewhere in New Jersey are entitled, and to foreclose the possibility of a remedy that disparately impacts the children of Lakewood or that forces them to forego their rights and privileges under the current law.

⁸ N.J.A.C. 1:1-2.1 defines a "contested case" as "an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing." Moreover, "[t]he required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests" and "[c]ontested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people." Ibid.

1 to -15; N.J.S.A. 52:14F-1 to -13. The motion was opposed by reply filing on October 22, 2014.

On January 14, 2015, Paul L. Tractenberg, Esq., filed a motion on his own behalf for leave to participate in the proceedings pursuant to N.J.A.C. 1:1-16.6 and in opposition to the motion to dismiss.⁹ On March 11, 2015, the Hon. John Kennedy, ALJ, granted Professor Tractenberg's motion to participate.

Following the submission of briefs on the motion to dismiss and oral argument held on June 9, 2015, Judge Kennedy denied the motion to dismiss on July 24, 2015. He concluded that the petitioners had standing to challenge the SFRA and that the matter was appropriately brought in the OAL.

On or about February 19, 2016, the petitioners filed a motion for summary decision contending that a hearing was not necessary, as all data necessary to rule on the matter was in the public record. On April 14, 2016, the respondents filed opposition to the motion, and sought to join Lakewood BOE as a necessary party. The BOE voted to not participate in the action. On July 19, 2016, the Hon. Solomon A. Metzger, ALJ, t/a, issued an order denying the motion for summary decision. He noted that "Lakewood's demographics pose[d] singular problems for the public school budget, but that that fact alone was not sufficient on its face to establish a constitutional level of deprivation."

On October 4, 2016, the BOE filed a motion to participate, which was granted on November 21, 2016.

In May 2017, the petitioners filed a motion for emergency relief related to the district's 2017–2018 budget deficit. Respondents filed opposition on May 23, 2017.¹⁰ That motion was withdrawn when the budget deficit was resolved through a State aid advance.

⁹ Professor Tractenberg is Professor of Law Emeritus Board of Governors Distinguished Service Professor at Rutgers University. He established the Education Law Center, the Institute on Education Law and Policy, and the Center for Diversity and Equality of Education.

¹⁰ The matter was re-assigned from ALJ Metzger to ALJ John Schuster. After he retired, the matter was reassigned to me in June 2017.

On October 9, 2018, the BOE'S motion to intervene as a party was denied prior to the commencement of the hearing.¹¹

The hearing commenced on February 5, 2018, and continued on February 7, 12, 13, and 22, 2018. After petitioners rested their case on February 22, 2018, respondents indicated that they wished to file a motion to dismiss. Following the last hearing date, the parties attempted to enter into some stipulations of fact but were unsuccessful. Following a March 27, 2018, conference on the record, the outstanding evidentiary issues were addressed, and a briefing schedule was set for the respondents' motion.

Respondents filed their motion to dismiss the amended complaint on April 30, 2018. Petitioners and participants opposed the motion. Before it was decided, the petitioners moved to re-open their case to present the testimony of another witness, which was opposed by respondents. Following oral argument, the petitioners were ordered to file an amended petition to clarify the relief they were seeking; respondents were permitted to file an answer. Petitioners were permitted to re-open the record to allow the witness to testify, and the motion to dismiss was held until the amended pleadings and answer were filed and the witness was permitted to testify.

On September 4, 2018, the petitioners filed their second amended petition which respondents answered on September 18, 2018.¹²

On December 18, 2018, the petitioners rested their case.

¹¹ The Lakewood BOE had originally taken the position that it did not want to be included as a necessary party; however, the BOE's counsel had changed since the commencement of these proceedings. No appeal was taken from the denial of the motion to intervene as a party.

¹² The second amended petition asked 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 T&E; 2) That the consequential reliance upon discretionary advance State aid payments pursuant to N.J.S.A. 18A:7A-56 to provide funding for T&E does not provide T&E funding in any given school year that is certain and predictable; 3) That the constitutional imperative regarding T&E requires sufficient funding that is not discretionary; and 4) That the Commissioner recommends that this matter be remedied by the Legislature.

On January 8, 2019, the respondents' motion to dismiss was denied, and the matter continued with hearing dates on July 9, 10, 21, and 22, 2019.

On July 29, 2019, the parties were asked, as part of their post-hearing briefs, to jointly stipulate, to the maximum extent possible, certain information relating to the district for each school year at issue in this matter (2014–2015 through 2018–2019), which should have been available to them as a matter of public record.¹³

¹³ The information requested the following:

School Funding Reform Act

- (1) Adequacy Budget (include calculation)
- (2) Local Fair Share (include calculation)
- (3) Local Tax Levy (General Fund School Levy and Total School Levy)
- (4) Equalization Aid
- (5) Transportation Aid (include calculation)
- (6) Special Education Categorical Aid (include calculation)
- (7) Total Aid

Note: Where relevant for a particular category above, include the amount in Governor's Budget Message/revised amount in Appropriations Act/amount if SFRA fully funded.

Other State and Federal Revenue Sources

- (1) Title I
- (2) IDEA Part B
- (3) Chapter 192 (Auxiliary Services)
- (4) Chapter 193 (Remedial Services)

Expenditures

- (1) Total tuition costs for private school special education placements (include number of private placements)
- (2) Total transportation costs (include breakdown showing amount spent on mandatory busing for public school students/mandatory busing for private school students/special education busing/courtesy busing/hazardous busing)
- (3) Actual costs amount per public school pupil
- (4) Total classroom instruction costs per public school pupil

Assessments and Accountability

- (1) PARCC results (include state averages)
- (2) Any other Statewide assessment results (include state averages)
- (3) QSAC placement results in areas of instruction and program, fiscal management, governance, operations, and personnel (include state averages)
- (4) Any other relevant accountability results, including CAFR's from 2014–2018.

Public School Demographics

- (1) Percentage of public school pupils who are at-risk (include state average)
- (2) Percentage of public school pupils who are LEP (include state average)
- (3) Percentage of public school pupils who are both at-risk and LEP (include state average)
- (4) Graduation rate (include state average)
- (5) Dropout rate (include state average)
- (6) Teacher-student ratio (include state average)
- (7) Percentage of public school pupils enrolled in AP/IB courses (include state average)

On August 28, 2019, the respondents declined, stating that they would stipulate to all documents already admitted into evidence at the hearing, but would not stipulate to any additional data to be part of the record without context for its consideration.

On September 4, 2019, the petitioners provided an itemization of the information that had been requested.¹⁴

The record closed on November 28, 2019, after submission of post-hearing summations.^{15, 16}

On December 17, 2020, participant district submitted additional documents. The DOE objected to the consideration of these documents, so they were excluded from the record.¹⁷

FACTUAL DISCUSSION

The following witnesses testified:

For the petitioners:

**Dr. Ross Haber, Laura Winters, Robert Finger, Malka Spitz-Stein, Marcy Marshall,
Dr. Danielle Farrie, David Shafter, Michael Azzara, and Melvin Wyns;**

(8) Percentage of graduates enrolled in college (include state average)

¹⁴ The information provided by petitioners was downloaded from either the DOE's website or the district's website as information provided to the State for the receipt of aid. The respondents would not stipulate to these statistics.

¹⁵ Extensions of time were granted for the filing of this Initial Decision, first due to an extended personal medical emergency, and then in accordance with Governor Murphy's Executive Order 127, issued April 14, 2020, created by the COVID-19 emergency which provided that deadlines for filing of a recommended decision pursuant to N.J.S.A. 52:14B-10(c) in any non-emergent contested case were extended by the number of days of the Public Health Emergency declared in Executive Order No. 103 (2020), as extended, plus an additional 90 days.

¹⁶ Following the closing of the record, participant Lakewood BOE continued to send additional documents to the OAL over objection by the respondents. Some were duplicative of exhibits in evidence; the items that were not in evidence were not considered.

¹⁷ The documents included a settlement agreement between the Department of Education and the Township of Lakewood Board of Education dated December 11, 2020, concerning the NJQSAC score of 2020 (which were not addressed at this hearing), and a list of state aid advances from 2014 through 2021, the amounts repaid, and the amounts outstanding.

For the respondents:

Kevin Dehmer, Christopher Soleau, Catherine Anthony, Raymond Zirilli, Robert Ortney, and Glenn Forney.

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Witnesses for petitioners:

Dr. Ross Haber, a demographic consultant with a background in education, was qualified to testify as an expert in demographics. He has a doctorate in educational administration from Teachers College, Columbia University. He has conducted 300 studies in different districts regarding enrollment projections, redistricting, facility utilization, and transportation efficiency analysis. He is not an expert in finance, and has no background in accounting, finance, or statistics. He is not a certified government financial analyst.

Dr. Haber was retained by petitioners to provide an enrollment-projection report on public and non-public schools in Lakewood Township. For his report, he relied on certain DOE data and he used the cohort survival method of projections, including United States census projections, housing construction, and births to arrive at his conclusions.¹⁸

Dr. Haber's report included several tables of information. Table 1 was an enrollment comparison using data from the DOE, although he was not aware that non-public schools self-report enrollment information to the DOE and are not audited. Non-public school students may include students coming in from out of the district or out of state and may be counted without their parents paying taxes to the municipality.

Using the information obtained from the Application for State School Aid (ASSA) filed by the district, Dr. Haber examined school enrollment, school facilities, and student

¹⁸ The Cohort Survival Projection Method forecasts the future population based on the survival of the existing population and the births that will occur.

transportation. In 2011–2012, there were 25,006 school-age children, 5,229 in public school and 19,777 in non-public school.

In Haber's Table 2, he used the cohort survival method, which used the average number of students as they progress from grade to grade, and also used the migration ratio. The projections were reliable for five years. For kindergarten, he looked at live-births rates and used that data plus residential housing growth. Haber thought growth looked to be about 5,000 more students by 2021–2022.

Haber used Table 1 to predict Table 2. He said the information came from the DOE website although no sources were provided. Table 1 relied on public school ASSAs from the DOE website. He agreed that if the underlying data were not reliable, then his conclusions were not reliable. He built upon enrollment projections to predict aid, but he is not an expert in finance or State aid.

Table 2 was a comparison between public and non-public schools and was the template for Table 3, but no source was given for historical data.

Table 3 was a projection of public school students but did not include data from pre-kindergarten. Haber listed 38,841 non-public school students for 2018–2019, but his Table 4 said 33,841 non-public school students. He said this was because of a typographical error on Table 2.

New Jersey has over six hundred school districts, but no other school district has a disparity between the numbers of public school and non-public school students as Lakewood Township does. Lawrence and Hewlett, New York, also have large numbers of students attending sectarian schools, but those towns have no outnumbering of the public school students by those attending the sectarian schools.

Haber's reports project substantial change in the district. He did not report any possible sources of funding. He did not remember whether he considered that Lakewood Township had one of the lowest equalization rates. He did not consider that Lakewood

Township has one of the lowest school-tax rates. He did not consider that voters could approve paying for non-public school transportation costs.

Table 5 showed a projected expense of \$38 million for transportation in 2021–2022, up from \$18 million in 2015–2016. This was an estimate based on transportation eligibility, as a percentage increase in enrollment would be commensurate with an increase in transportation expenses.

For school year 2017-2018, the adequacy budget to educate the public school students in Lakewood was \$117,325,784. Tuition for enrolled public school students not actually going to the public schools, such as for special education, was \$37,587,808. Transportation was \$38,294,730, for a combined total of \$75,882,538.

Haber said Table 5 transportation expenses could be reduced if the non-public schools were built closer to homes, or if bus routes were shared. With fewer children riding on buses the cost would be less. He did not consider things that did not exist, such as a bridge over Route 9. The tuition and transportation costs in Table 5 came from the Lakewood district and the user-friendly budget. His tuition numbers were off by \$3 million for 2015–2016, and he agreed that his numbers did not match up. Two-thirds of the cost of special education should be included in tuition. He agreed it was possible he was double counting tuition and services, and that he had worked with petitioners' attorney while doing his analysis.

The tuition column in tables 5 and 6 showed \$28,457,996, which correlated to school year 2015–2016, but the revised column was not the actual expense. The Table 5 history and projection of tuition contained an error, perhaps in typing, and a year was missing. While the Table 5 adequacy budget that was projected was an assumption, he did not detail his method of producing adequacy amounts or the source. He held adequacy flat through 2022, but it changed year to year as the state population changed.

Table 6 concerned the adequacy amount for tuition, transportation, and other required services such as occupational therapy (OT), physical therapy (PT), speech, and other related services. He carried over the numbers.

Haber's projections were based on trends for 2018–2019, 2019–2020, and 2020–2021. He applied a percentage of the increase to a weighted number. For example, if six children in class increased to ten, that might not mean one more bus, but 54 more children might mean another bus. He applied the growth to expenditures and economies of scale. The methodology was not explained. Haber also used residential-construction approvals in his calculations but did not include that. At some point, population growth should be capped because of space.

On Table 6, it was an error where his comment said Table 4, when he meant it should be Table 6. The tuition numbers did not match up. Adequacy and transportation matched to Table 5, but the tuition did not match the actual budget. Haber assumed that part of special education was included in the adequacy budget. Table 6 showed services such as OT, PT, and speech, but speech was entirely funded. Table 6 separated the costs for services from adequacy, but Haber did not know if this was included in funding.

Table 7 was extra aid available for public school students, but he did not include extra aid in his considerations. He did not know if the State provided technology aid or security aid.

The budget included equalization aid, which was \$15 million in school year 2015–2016, special-education categorical aid, extraordinary aid, categorical security of \$2 million in 2015–2016, Perkins grants, and other aid of \$3 million in 2016–2017. The local-tax-levy contribution was not included, but it was \$90 million in 2015–2016 and was one of the lowest in the state. He did not include federal aid available to the district under federal Titles II and III, or available under Individuals with Disabilities Education Act (IDEA) aid.¹⁹ The State provided preschool aid, Chapter 192 and 193 services, and non-

¹⁹ Title II grants to the states provide funds for supplemental activities that strengthen the quality and effectiveness of teachers, principals, and other school leaders. The purpose of this is to provide low-income and minority students greater access to effective teachers, principals, and other school leaders. Title III funds help ensure that English Learners (ELs) attain English language proficiency and meet state academic standards.

public school textbook aid, nursing aid, vocational-technical aid and security aid.²⁰ Some services and tuition were included in the adequacy budget.

In Table 8, his conclusions were that enrollment was growing, and that over the next five years, the number of non-public school students would increase. At the same time, the number of students in the public schools was growing, but not as fast. Ninety percent of public school students were in need; 88% were from non-English-speaking or partial-English-speaking homes. The percentage of special-education students in the Lakewood public school district is higher than the State average. Everyone agreed that there was a relationship between finances and education. Lakewood Township ranked 555 out of 564 communities in per-capita income.

In Table 9, the tuition costs did not match, and the transportation costs did not match. The projections for school year 2020–2021 were missing. The adequacy numbers did not match other tables and budget numbers. The most accurate year was 2015–2016. He came to his conclusions by taking the average from 2015–2016 and 2016–2017, but the number was wrong. And his conclusion was based on data that did not match historical data from Table 6. The total needed in Table 4 did not match Table 7's total needed. In certain areas the data did not match up or the data was missing, or no sources were cited.

A percentage of the district's budget is a loan from the State. Transportation and special-education expenses are \$60 million in the budget, leaving only \$80 million when the adequacy budget says that \$117 million is necessary. The SFRA law never anticipated such a disparity with transportation and special-education expenses. The district cannot properly educate public school children over next five years; their needs cannot be met in Lakewood.

²⁰ Chapter 192 programs provide nonpublic school students with auxiliary services such as compensatory education, English as a second language, and home instruction. Chapter 193 programs provide nonpublic school students with remedial services such as evaluation and determination of eligibility for special education and related services, supplementary instruction, and speech-language services.

The law mandated that transportation was paid to and from school only for certain non-public school students, but not all. Non-public school students were not required to get transportation unless, from kindergarten to grade eight, they lived farther than two miles from the school, and in grades nine through twelve, farther than two and a half miles from the school. Students who lived closer were not entitled to transportation. Courtesy busing for those who lived closer than those distances was not required unless the Lakewood BOE decided to provide it.

Haber did not include in his report the \$16 million that Lakewood received in Chapters 192 and 193 aid in 2015–2016. Haber’s report did not mention Chapter 192–193 aid that Lakewood received every year. Lakewood Township’s non-public school students received Title I aid for economically disadvantaged students from the federal government.²¹ Haber did not mention IDEA funding in his report.

The State provided textbook aid for non-public school students. Haber did not know if the State provided other aid, such as nursing aid or home instruction.

The user-friendly budget matched up tuition and transportation, but some of the numbers did not match for 2016–2017. He was not sure if he omitted one year from his calculations and was not sure if he had the right draft.

Haber was not familiar with the DOE definition of adequacy as used in the Formula for Success (FFS). The FFS equalization is the adequacy budget minus what the township raises (local fair share), plus categorical aid, plus other aid and Chapter 192 and 193 funding. The adequacy budget is a theoretical concept of the cost estimate necessary to provide a T&E.

Haber did not know for certain whether tuition for public school students in out-of-district placements was included in the adequacy budget for public school students and said that this might represent a possible double counting of tuition. No sources were

²¹ Title I is a grant program that provides aid to low income students for educational services.

provided for the data he used for the tuition cost or transportation cost. Any projections could only be as accurate as the data used.

Haber made an assumption of enrollment increase, but not whether the adequacy budget would change. He did not consider the impact on the district if the Lakewood School Transportation Authority (LSTA)²² program expired. He agreed that if the LSTA program were to expire, it would cost the district more money to transport students. He did not consider whether costs could be saved if Lakewood Township built a bridge over Route 9 so more students could safely walk to school and avoid a hazardous condition. Haber did not consider a raise in the school-tax levy, or whether busing children to schools closer to their homes, or whether a growing population would mean more equalization aid. If enrollment increased 10 percent, he assumed that expenditures would increase 10 percent and that the adequacy budget would go up based on enrollment, but this was not considered in his calculations.

The source of his historical transportation information was the Lakewood business office, which provided him with district summary forms. He had no idea whether they were accurate.

Haber could not predict how costs might change if the law changed. And the estimates were based on a formula that did not match up. He did not consider a bridge over Route 9 because it did not exist. Nothing showed that the private schools were located closer to where their students resided. Ninety-eight percent of students attending sectarian schools did so in certain sects and gender-specific schools.

He did not consider the factors on State aid, as he was only looking at how much it cost to educate children. He did not go to how the cost was derived. He did not consider revenue, just expenditures.

²² The LSTA was created pursuant to N.J.S.A. 18A:39-1d, which became effective in 2016. That law “establish[ed] a three-year nonpublic school pupil transportation pilot program” under which “a board of education of an eligible district [with more than 5,000 students attending a remote nonpublic school] shall disburse to [a] consortium [of nonpublic schools] an amount equal to the aid in-lieu-of transportation amount for each nonpublic school pupil who is attending a nonpublic school which is a part of the consortium and who is required to be transported by the eligible district pursuant to N.J.S.18A:39-1.”

Haber considered factors not mentioned in his report and added what was needed. He concluded that Lakewood did not have the financial means to conduct a thorough and efficient education. He did not consider a public question about raising taxes or the ability of the people of Lakewood Township to raise taxes. He looked at the per-capita income of people employed and because Lakewood Township had a low employment rate, he assumed it had less ability to raise taxes, not that it might mean a large under-age population.

Haber looked at the growth of public school and non-public school students and saw how Lakewood Township is unique with non-public school students. He looked at income, growth, and a large transient population. He rejected some factors not included in his report, such as growth of population, racial/ethnic origins, the number of free- and reduced-lunch students, and the number of special-education students.

He was not able to consider the ability of the town to expand, as he did not know the master plan and had no way to determine it. He used some census data but had no federal data. He did not consider the effect that bringing the out-of-district special-education students back to the district would have; rather, he looked at the budget as a whole, and did not break it down.

Dr. Laura Winters has been the superintendent of Lakewood public schools since 2012.

In 2018, Lakewood had 6,092 enrolled public school students: one high school with grades nine to twelve; one middle school with grades six to eight; five elementary schools—two with kindergarten and first grade, and three with grades two through five; one preschool for special-education children ages three and four, and one for general-education students age four. The middle school has from twenty-eight to thirty-two students per class when it should be twenty-four. All schools operate at full capacity. The graduation rate is 75%, up from 69%, but the state average is 90.1%. The district is 8.1% Black and 86% Latino.

The district includes many students who have limited English proficiency (LEP) and require ESL (English as a second language) instruction, which is provided for forty minutes per day in the elementary and middle schools. For school year 2015–2016, there were 1,630 ESL students; for school year 2016–2017, there were 1,426 ESL students; and for school year 2017–2018, there were 1,538 ESL students (or about 25% of the student population).

For school year 2017–2018, 100% of the students received free or reduced lunch paid for by the United States Department of Agriculture.

Winters’s role in the development of the district’s budget was to provide educational input and to describe the programs or facilities that are needed for the students. In 2017 the district initially proposed an expansion of four classrooms and an addition to the cafeteria, but this was eliminated at the final budget.

For school year 2018–2019, the district budget process commenced in January with a projected budget that had a \$17–20 million shortfall just to maintain what they had, with nothing new added. If the projected shortfall were not covered, they would have to cut teachers for the fourth year in a row. In 2017, they sent out 140 reduction-in-force letters and lost 78 teachers either to their resigning in anticipation of layoffs, or because they had found employment elsewhere.

In 2017-2018, the budget was down \$14 million. The district asked for \$10 million in aid and received \$8.5 million in aid from the State. The State also deferred a \$1.5 loan payment that was due. This contributed to the ability to rehire some teachers and to avoid some of the budget cuts.

The Township also contributed \$1.1M to have a sports program which would have been lost in the budget (\$557,000 for public school sports, \$600,000 for non-public school students). The Township has indicated that no funds will be forthcoming for the 2018-2019 school year. Lakewood Township, not the district, pays for courtesy busing.

For school year 2016–2017, the district paid \$32,766,776 for out-of-district placements for 400 students who were registered as students in the public schools.²³ This is projected to increase to approximately \$36–38 million in 2017-2018. The child study team has determined that there is insufficient space in the district for all special-education students, so many out-of-district placements are necessary.

Each year, the district generally conducts 500–600 evaluations for entry into its preschool program. There are 500 kindergarten students. The district features an academically gifted program in elementary school and a guidance counselor is present in the middle and high schools.

The biggest challenge to the budget is that the district cannot hire new teachers, and teachers are resigning because morale is low. The teachers' union prepares for reductions in force (RIF's), and the children are worried about sports. The district has too much professional turnover. The district spends about \$2.7 million per year in professional development. It trains new teachers and then they leave, especially the ones without tenure, and find employment elsewhere. During the last year the district had fifty-three first-year teachers, forty-eight second-year, and thirty-six third-year. The district is always behind because it has new teachers who are not high-impact teachers or highly effective teachers. The average teacher in the district has only four to five years of experience.

The district is making progress in test scores, although they are well below where they should be. Twenty-seven percent of students are meeting expectations, and 73% are not, although 24% are approaching expectations. Lakewood is below the state average, although the students and teachers are working hard. The district keeps getting loans and issuing RIF's and it has become a cycle. The students' homes are not stable, and the schools are not stable. Lakewood has no industrial-arts programs; wood shop and auto mechanics were given up years ago. The gym is beautiful but has been there forever.

²³ Counting these students, total district enrollment is 6,492 students. Approximately 30,000 more school-age children reside within the Lakewood district but attend non-public schools.

Pursuant to statute, the district must certify that its budget provides a thorough and efficient education. And she certified the budget. But no one could tell her what a thorough and efficient education was: she did not know if it was counselors, libraries, or educational curriculum and instruction. As for facilities, the BOE could put the issue to the voters by special questions to seek additional funding.

As for Partnership for Assessment of Readiness for College and Careers (PARCC) testing, Lakewood is trying to raise PARCC scores. They have seen slow and steady growth with incremental progress. They have met Every Student Succeeds Act (ESSA)—the successor to No Child Left Behind—accountability in all targets but for absenteeism. ESSA facility accountability targets were met except for the middle school, which is overcrowded. Lakewood High School is considered a priority school because of its low test scores.

Graduation requirements are set in the regulations and require twenty credits in language arts, and fifteen in mathematics, algebra, and geometry. The district has all courses to meet graduation requirements for its students.

Lakewood has planned a response intervention reading program and career academics in high school (learning cohorts). The middle school has robotics, coding, horticulture, and journalism. It also has new technology classrooms and Apple TV. In foreign languages, only Spanish is taught in school, and that is what all students have chosen, but other languages could be taken online, although educationally it would be better to have a teacher in a classroom.

The library is open three days per week and a paraprofessional is in charge. The school provides remedial work and a homework club, and some advanced placement and honors classes in English, math, and Spanish.

For vocational-technical education the school has some in-house career programs and sends some students to the Ocean County Vocational Technical School (OCVTS) and career field. It is difficult to get into the OCVTS program, as it requires good grades

and has a strict attendance policy. Some students do not want to leave the district high school. Lakewood does not have the money for its own vocational-technical program.

Lakewood offers graphic design and fashion through Perkins grants; the school has a culinary and TV classroom (Title I and MAC rooms²⁴), recording arts and media and data entry, plus an ROTC program. Other offerings include computer classes; library skills; art and music; chorus; band; and orchestra. Title I was cut this year and some after-school programs were cut.

Lakewood's athletic director was cut; now they have a part-time athletic director who is not an employee of the district. The New Jersey State Interscholastic Athletic Association (NJSIAA) says there should be a full-time athletic director and secretary, but both were cut from the budget.

Winters identified Lakewood's problem as not having enough highly qualified teachers, because of low salaries and high turnover.

Lakewood was always in need of Title I assistance. The high school was a priority school, but this year they received only \$3 million in Title I funding, which paid for training, professional development, computers, reading, and materials.

The 2017 New Jersey Quality Single Accountability Continuum (NJQSAC) report showed that Lakewood passed in personnel and operations, and had less than 80% in instruction and programming, governance, and fiscal compliance. Instruction failed because it was based on the PARCC scores, which were low. Fiscal compliance failed because the budget has a deficit. The county reconfigured the budget and told them to apply for an equivalency waiver.

Robert Finger testified that he has been Lakewood's interim assistant business administrator since October 2017. He had previously been employed as business administrator and Board secretary in Lakewood from February 2008 to November 2010.

²⁴ Title I provides a grant for educational services for low income students, and MAC is a computer application that aids learning.

He worked for the DOE for fourteen years as an auditor, was county business administrator in Hudson and Essex counties, and served as tax auditor for the New York Department of Labor.

Finger left Lakewood in 2010 when there were no fiscal monitors in place and the audit showed a \$5 million surplus. The fiscal monitor appointed by the State arrived in 2014.

Finger reviewed Lakewood's annual audits and budgets from 2013 to the present. Starting in 2013–2014, Lakewood was going into a deficit, which was then about \$6.5 million. For 2016–2017, it was \$4.3 million. For 2017–2018, Lakewood received a \$8.6 million State aid advance. The hope is to spend less to bring down the deficit. He did not know if other districts received loans to meet their budgets.

As of December 31, 2017, Lakewood had more revenue than expenditures, but had the potential for another deficit. He looked at revenue and tuition and went through special-education and out-of-district costs. In some cases, students had not been accurately counted, and there were more than appeared enrolled.

The DOE relies on information received from the districts and reconciles this with the actual student count. Each year, the DOE issues bills to the districts for the estimated tuitions that the boards of education paid as tuition. Sometimes deficiencies showed up later and then the district would get re-billed. Lakewood received re-bills for 2016–2017 of almost \$2 million, for which Lakewood must reimburse the state within two years.

Finger reviewed the 2017–2018 school year budget. He noted that the budget includes “undistributed expenses” which are, for the most part, expenses paid for public school students who go to special-education out-of-district placements, and for support services. When the budget was done for 2017–2018, Lakewood needed a \$8.6 million advance State aid payment, plus \$1.6 million from Lakewood Township toward sports and courtesy busing and related services. He did not know if Lakewood Township had a budget surplus.

For transportation, Lakewood gives the State the mandated amount for the LSTA program, and if the cost of transportation is less, the district pays \$1,000 per student as aid in lieu for each student bused by the LSTA. The LSTA program will be reviewed in 2019, as he thinks it should.

For 2017–2018, Lakewood budgeted \$20.2 million for the LSTA program. Enrollment in October 2017 was 6,090 on the public school rolls, plus another 361 who had been placed in private schools, 17 sent elsewhere, 173 received from elsewhere, and 6 in State facilities, for a total of approximately 6,600 students in the public school system. The general-fund operating expenses for 2017–2018 was \$143,455,116; \$27,600,000 was for transportation, with \$20.2 million going to the LSTA. Lakewood pays for special-education services even for those who are sent out of district. The budget showed \$31,963,753 for special-education expenses, but that might not have included some extraordinary services.

The budget process starts in mid-March when the proposed budget is advertised; in April-May, they have hearings; and if the budget is approved, it becomes final.

Lakewood Township has approximately 37,000 children who attend school; 6,000 are in the public schools, and the rest are not. The financial situation in the Lakewood public school district is unsustainable due to these unique demographics. It is a 6,000-to-30,000 disparity. In Teaneck it was 4,200 public to 2,200 non-public. Lakewood Township has five times the number of students in non-public schools as in public schools. This has a major effect on transportation, as the district pays \$1,000 for each bused child.

Finger compared Lakewood to nearby school districts located in Freehold Borough, Jackson Township, Toms River Township, and Brick Township. Looking at these four, the cost of transportation and tuition for out-of-district students averaged about 4–7% of the budget. In Teaneck, with many students attending sectarian schools, it was 9%. Special education tuition and transportation could be 8–14% of the budget, but in Lakewood it was 38%, and the projected amount for 2018-2019 is 40%. These expenses—transportation for public school and non-public school transportation, tuition

for out-of-district placements for special-education placements—are mandated by the State.

This is unsustainable, because next year tuition is going to increase \$7–8 million, plus another \$3–4 million for transportation. Districts are permitted a 2% tax-rate increase, and for Lakewood 2% is about \$2 million. For 2018-2019, without tax increases and more revenue, \$17–23 million in additional funds would be needed without full funding of the SFRA or in extraordinary aid. This does not even include raises for district teachers or the \$2.2 million the DOE has deferred for paying back previous loans, so there could be a \$19–25 million shortfall. Even if the SFRA were fully funded according to the formula for public school students, the district would still be underfunded for its expenses.

Finger analyzed the cost of special education and transportation costs. About 35–36% of the budget is for special-education costs. For 2016–2017, the operating budget included \$52 million for special education. The total in 2017–2018 was \$52,438,739, and for 2018–2019 it was \$58,622,034. Additional students are coming into Lakewood Township constantly, sometimes three per day, or fifteen to twenty per week.

The transportation aid received for school year 2017–2018 was \$4,199,793. This was calculated by the State based on 2,336 public school students, 730 special-education students, and 19,174 non-public school students, for a total of 22,240 students. Mandated non-public school transportation is \$1,000 per student. In 2017–2018, \$28.7 million was spent on transportation. The State reimburses about \$10 million per year for transportation, so the transportation budget is about \$18 million.

For 2017–2018, the combined cost of transportation and special education was \$49.4 million plus \$28 million, for a total of \$78 million out of the total budget of \$144 million. More than 52% of the district's budget goes for special education and transportation. For 2018–2019, the projected costs for special education and transportation are a total of \$88 million.

Every year Lakewood Township is adding 2,500–3,000 non-public school students who are eligible for transportation. He hopes the monitors are aware of these expenses. Next year's deficit is projected at \$17–23 million. The district is trimming at the edges to get the numbers down. This budget goes up about 10% per year. The anticipated 2017–2018 budget showed that tuition and transportation had gone up.

The district has a revenue problem. The State-aid funding formula works well for 99% of the state. It does not work for Lakewood because the district cannot contribute to its adequacy budget because wealth and ratables are taken into account when calculating aid. The district gets some equalization aid. Lakewood has a base of 36,000 students, where one-sixth of the students are in public school and five-sixths are not. The tax levy is not determined just by the 6,000 attending the public schools, but by Lakewood Township's population and ratables. There is a bigger pot of money in Lakewood Township. The tax levy generated \$96.9 million this year based on property taxes.

Finger was not aware that Lakewood Township's school tax rate was one of the lowest in the state based on equalization value and reassessment. The Lakewood BOE set the tax rate within a 2% levy cap. Although revenue is restricted to the 2% hard cap, a legislative determination, Lakewood Township voters could exceed the cap if they wanted to pay for things such as transportation costs as long as the money was not for mandated expenses. In 2016 voters rejected a proposal to exceed the tax cap to cover courtesy busing. If busing is provided for public school students, then it must be provided for those attending non-public schools. The budget does not pay for courtesy busing.

Until now, the State has deferred payback of advance aid, but David Shafter, a State monitor, told him Lakewood will have to pay back \$2.8 million in 2018–2019, and the State has been recouping it since September.

In projecting the 2018–2019 budget, Finger understood that the LSTA would still be in place, but it would be up to the Commissioner to continue it and to include it in the budget.

The count from the District Report of Transported Resident Students (DRTRS) was 19,174 students effective October 15, 2016. If there were more students, the district would receive more transportation aid.

The district received \$4.2 million in transportation categorical aid and was reimbursed that year for mandatory expenses: the State reimburses \$290 to get to \$1,000 per student. Basically, the district pays the first \$710 per student and the State picks up the next \$290. If the LSTA were abolished, he did not know if the district would be able to run buses for less than \$710 per student, because it would depend on who provided the buses, the bids, etc.

If Lakewood is receiving less money because the State is taking money back from the loans, cash flow will suffer. There is a line on the budget for all revenue from all sources, including DOE State-aid advances. They work with the state monitors and would be seeking \$17–20 million in aid for the next school year.

Malka Spitz-Stein is the supervisor of STEM (Science, Technology, Engineering, and Math) for Lakewood and she oversees Sections 192 and 193 grants. She entered the district in 2007 and has been in Lakewood for ten years. Before that, she was a teacher in Long Branch for seven-and-a-half years. She supervises seven schools in the district as curriculum supervisor of math and science to make sure the curriculum is implemented correctly in class.

Spitz-Stein works on curriculum; writes lessons; gives professional development; and visits classrooms and gives feedback. Some districts have superintendents for grades six to twelve, but Lakewood has had no assistant superintendent in this area since it eliminated the position five or six years ago. Spitz-Stein is involved in the hiring process for science and math teachers and in the evaluation of teachers. After teaching, the focus is on the curriculum and strategies. As teachers progress, they are trained.

A tenured teacher is rated. More experienced teachers are better for students. It takes about four years to have actual professional development and to be able to

implement a program. At the five-year mark, a teacher gets to know students and understand them.

In the high-school mathematics department, four teachers out of thirteen are tenured. Sixty percent of high-school math teachers are non-tenured. Teachers who are non-tenured have less experience; they need training; they do not yet have methods to reach individual students. Teachers need to differentiate with their students.

This year there were three first-year teachers (new) due to turnover in the math department; two second-year teachers; and three teachers who are nearing four years of experience.

Spitz-Stein has concerns about holding on to teachers. If teachers are not confident that they will have a job at the end of the year, it leads to teacher instability and the school is not stable. The median teacher salary is \$52,046. When teachers leave Lakewood, they are receiving salary increases of \$10,000–15,000 per year.

Lakewood has had twenty new hires in math since 2011. Teachers new to the district have been certified by the DOE and could have experience in other districts. Only two teachers have received tenure since 2011, and two already had it. Lakewood complies with New Jersey tenure law: in 2015-2016, only 2 out of 396 teachers were rated not effective, and in 2014–2015, only 2 out of 304.

In the spring of 2017, only 7% of high-school students were tested as proficient in math, and students are in need of teachers to get them to learn algebra 1. In the sixth and seventh grades, there are twenty to thirty students in math and science classes.

PARCC target benchmarks showed that in math, at the sixth-grade level, 12–13% of the students were proficient; at the seventh-grade level, 14%; and at the eighth-grade level, under 20%. Twelfth grade proficiency was under 10%. The high school did not meet its target level, but the elementary school did.

Statewide PARCC results were 54% for elementary students and 23% for high-school students. In Lakewood, elementary grades three to five showed that 20–25% met their target, as compared to statewide, where in the same grades, 47% did. Judging from the PARCC results, the students are not on grade, although performance improved in school years 2015–2016 and 2016–2017. Grades three to five showed significant improvement in math.

The State sets the target; the district did not reach a target in math for middle school. Students in science and math are not on grade level. Based on scores from the State, math is showing a downward trajectory; they need to make sure that elementary students have their needs met and that these projections are addressed.

Five or six years ago Lakewood had more than twenty interventionists who would provide services (four were for math but the math ones were eliminated). It would help students to have them back. English/language arts teachers were also cut. Readiness is a computerized intervention program that was used last year and was reliable.

In technology and English, students have computers to use from elementary school. In middle school, one quarter of students are enrolled in robotics, which is paid for by Title I. Success in high-school algebra is a predictor of graduation, but students in algebra 1 are not on grade level.

Teaching in kindergarten through grade 12 is based on the State Learning Standards. She writes curriculum and lessons consistent with State standards. Teachers never receive education in these standards, so they need to learn on the job. At Stage 1 for the PARCC, standards are addressed for the children's level; at Stage 2, they are rolled out to teachers who were trained on what to say and how to get kids to use generalized knowledge; and at Stage 3, classes are observed and teachers receive feedback. Stage 3 is the most critical, as everything must be done at grade level and get implemented. At elementary school, every teacher must be observed for any needed follow-up and feedback. They want proficiency in every child, and Lakewood was performing well below standard.

Marcy Marshall testified that she is in her fifth year as principal of Lakewood High School. She entered the district in 1996, and worked as assistant principal, director of guidance, counselor, and teacher. She has two master's degrees in administration and education. The student population of the Lakewood public schools is 85% Latino, and less than 5% Caucasian; the rest are African-American. One hundred percent of the student body receives free or reduced lunch.

The high school has lost programs in the past eight years, including auto mechanics, graphic arts, and metal shop. The rooms were repurposed for other uses, and BOE offices are now located there. They now have culinary, photography, and fashion design, among other programs, funded by Perkins grants. Federal funding in 2016–2017 was \$1.5M; for 2017–2018, it was \$183,000. As a consequence of the financial loss, teachers' stipends and programs were cut; after-school programs were affected; twilight academy (a program from 2 p.m. to 7 p.m. with math consultants) and college visits were cut.

School starts at 7:00 a.m. for the 1,200 students in the high school (350 freshmen, 320 sophomores, 280 juniors, and 220 seniors). (Prior to the 2016–17 school year, school started at 7:15 a.m.) It is early, and it is a problem. Many students have jobs after school, and when they start school early, their attendance is affected; they have chronic attendance problems because of their jobs. The buses come at 6:15 a.m. Some students come to school late. The school has eight security guards plus metal detectors. Incidents of violence are mostly fighting. The high school building dates from the 1970's.

The State graduation rate is around 90%; the rate has slowly been rising in Lakewood from 74.8% to 75.4%. The dropout rate was about 4%, although some students drop out and then return. Ten to 12% of the students go to a four-year college and 40% go to a two-year college.

The school has successful athletic programs and about 400 student athletes. In the fall, they have volleyball, football, field hockey, and tennis; in the winter, bowling, basketball, and track; and in the spring, softball, baseball, track, and tennis. Lakewood Township, not the BOE, funded athletics this year. Before this it was in the school budget

and comparable to what is being presently offered. The school has full-time coaches who are teachers who coach after school, and a part-time trainer. The athletic director is a teacher of physical education and health who receives a stipend as the athletic director. Prior to this, the school had a full-time athletic director and trainer who were part of the budget. The athletic program is important for students, as it provides a safe place after the school day ends. Athletics gives them a sense of family and something to do.

For foreign languages, Spanish is funded by the district. When Marshall started, German was taught, and many years ago, they had French.

Marshall reviewed the New Jersey School Performance Report for school year 2016–2017, which is put out by the State in October or November. The data comes from the reporting districts and the schools and includes the graduation rate, absenteeism, and shared instructional time.

About 120 students at most went to the vocational-technical school during junior and senior years. There is a charge to Lakewood for this that is paid from the district budget.

Most teachers started right out of college, but each one is certified by the DOE and qualified by the BOE. For school year 2017–2018, the high school had eighty-four teachers, of whom approximately thirty to forty were non-tenured. (Nine were first-year teachers, ten were second-year, and fifteen to twenty were third-year.) Fourteen teachers left last year, some tenured and some not, for stability and better pay. This year seventy teachers stayed. Lakewood is one of the lowest-paid districts in the county. Monmouth County pays higher salaries. Teacher retention is a problem, as teachers want stability in their careers.

Marshall spends her summer trying to find experienced teachers, but mostly she gets new ones, which negatively affects the students, who need consistency and stability. Teachers must be rated in the evaluation system used by the State, and Lakewood is in compliance. In school year 2015–2016, only two were rated as non-effective.

The district has four curriculum supervisors: STEM, ELA (English Language Acquisition) & social studies; ELL (English Language Learner) and ESL; and special education. When she started there were more, and the areas of supervision were very content specific. When these positions were lost, the impact was apparent, as she could see the difference because she did not know specific content. She can tell good teaching, but it helps to know content. They do not always have a content specialist to do the review. The STEM supervisor will observe the non-tenured teachers.

In 2007, there were one or two assistant superintendents who helped with curriculum and instruction; now there are none.

Seventy-five percent of the student body comes from non-English-speaking families; less than 15% are non-English speakers. ESL has one teacher, and the district funds a newcomer program for twenty students.

Every other district has remediation and intervention specialists where students get extra support, but Lakewood does not have this program. They do have a class for remedial math in ninth grade. Lakewood is struggling with attendance, language, and test scores.

Lakewood has twelve to thirteen special-education teachers who teach eighty to eighty-five students with IEP's, for in-class support and resource pull-out, but they do not have teachers in all areas of specialization. There are about seven students to a teacher. They have in-class support for language arts (LA), and resource pull-out in math and LA (every grade), and for science and social studies (ninth and tenth grades). They need extra teachers. If a student is classified in LA, they need support in other classes. But funding is why they do not have them.

PARCC scores were improving. Lakewood High School applied for an equivalency review for its PARCC assessment scores in its next improvement plan and has been identified as a priority school. Other than chronic absenteeism, it has met its ESSA accountability goals.

Perkins grants are provided for vocational-technical education. Lakewood does not have an in-house vocational program, but Jackson does, and Toms River will open a career center in September. The high school offers two art classes, TV production, MAC labs, media center, photography, and recording arts.

Lakewood offers courses in all requirements for graduation: twenty English courses; fifteen math, geometry, algebra, and pre-calculus courses plus advanced placement (AP) courses (eleven students); fifteen science, chemistry, physics, AP physics 1 (twenty-five to thirty students) and AP physics 2 (nine to ten students) courses; and fifteen social studies, United States and world history, and AP United States history (fifteen to twenty students) courses. The high school also offers financial and entrepreneurial skills; online language; Spanish; AP English language and composition; AP English literature (thirty to fifty students); AP Spanish (ten to twelve students); New Careers academy program; STEM, business, 2 pathways; Oceans 1 and 2—marine studies; horticultural and greenhouse; music, film, and performance ensembles; and band, choir, and orchestra. No student is presently taking an online program offered by and paid for by the district. The BOE pays for choir and music programs, and art classes. Students have a fine-arts requirement for graduation, and the foundation class is the one that most students take.

In the AP courses, students received grades of 3's and below; none passed the AP physics course. For AP college credit, colleges require grades of 4 or 5. One student received a 4 or 5 in AP Spanish, and one did well in AP physics.

Danielle Farrie, Ph.D., has been the research director for nine years at the Education Law Center (ELC) and works to enforce the rights of public school students. She is responsible for data analysis. Dr. Farrie has a doctorate in sociology from Temple University. She did analysis for the New Jersey Supreme Court in Abbott XXI, for the 2011 fiscal year, about the impact of the budget on students, and her report was accepted by the Court. She prepared a report at the request of the petitioners. She has never been to Lakewood Township.

The ELC prepares a school funding report annually. Dr. Farrie does research and writing on school funding and has worked with Professor Baker on school funding and educational outcomes. She worked with another author on a book chapter tackling school-funding equity around the country; her chapter was "From Rodriguez to Abbott." She wrote about the SFRA and Abbott. A separate report identified disadvantaged students in markets. A 2016 report discussed school funding, from resources to educational outcomes.

Dr. Farrie holds no degree in accounting or public funding, and she is a researcher, not an educator or a business administrator. Her dissertation was on school choice and economic segregation. She previously worked in the Institute for Public Affairs which does not deal with financing. She began working on school funding when she started work at the ELC. She has no experience in developing educational policy or implementing policy. She does not do professional analysis and does not put together a school budget.

She has testified in court before and was accepted as an expert in educational funding.

Dr. Farrie is familiar with the SFRA standards, which are linked to a weighted formula. The SFRA determines the level of funding to provide students an educational curriculum. It is the base cost for regular education plus additional funding for special education, at-risk students, and poor students. The funding level is divided into the local share and the State share (called equalization aid). The adequacy budget is the local fair share and the State equalization aid. The adequacy budget is supplemented by categorical aid paid by the State to cover the costs of transportation, security, and special education.

For special education, the SFRA pays one-third of the cost through categorical aid, and two-thirds as equalization aid. The local fair share is based half on income and half on the equalization of property values in the district.

Dr. Farrie studied Lakewood's school funding through the State aid notice. The base amount per pupil is \$11,042 and is the same for all students. Those at-risk students receive the base plus 57% more. There is also a geographic cost adjustment.

The SFRA uses a census-based formula; it assumes an average classification rate for special education of 14.92%, and Lakewood is funded as if it had an average classification rate. If the district has a greater percentage of special-education students, then the district is underfunded. Speech is funded separately from special education; the state average is 1.63%.

Dr. Farrie was not sure how the average classification rate was calculated. If the average were determined by the district, then Lakewood would be higher.

The State calculates how much a district needs to raise as local revenue to meet its adequacy budget. The local fair share is how much residents are willing to pay to fund the local schools. Equalization aid is adequacy budget minus local fair share.

Special education is paid at one-third categorical aid and two-thirds from the local fair share. For security aid, low-income districts receive more. Transportation is also paid as categorical aid. It is based on population and non-public school students, plus aid in lieu based on enrollment in the district and the length of bus routes.

SFRA funding was phased in as State aid for one year; it was reduced in the second year, was cut in the third year, and has been flat-funded since. Most districts have not received SFRA aid.

CAP adequacy is defined as the adequacy budget plus other categorical expenses.

Titles I, II, and III funding do not have any bearing on SFRA, and SFRA does not include federal funding or non-public funding. The SFRA was declared constitutional. However, Lakewood Township is unique, as its public school population is not reflective

of the school-age population. The majority of Lakewood Township's students attend non-public school.

For special education, a similar demographic is present. The adequacy budget is based on district enrollment and special education is funded on a percentage basis. Lakewood is different because special education and transportation are mandated costs for the district. Classified students receive services through IEP's. There are three reasons behind Lakewood's higher special-education costs: a large population of special-education students; a large number of students with the highest cost of disabilities; and higher-than-average out-of-district placements, which are more expensive.

The special-education student population differs from the general-education population. The comparison is to the school-age population with race and age, as compared to special education. White students are more likely to be classified, which suggests that some white students opt into the public school setting in order to get special-education services.

Lakewood's classification rate is above the state average, but those decisions are made by the school district. Some districts are even higher than Lakewood because the statewide 14.92% classification rate is an average. She did not remember if the district provided mandated special-education services, nor was she familiar with the State funding them through Sections 192 and 193.

The State rate is based on the average number of classified students, an average number of high-cost disabilities, and the average cost of school. Lakewood places more students in private placements, so its special-education costs are higher.

Transportation gets paid per pupil. Lakewood's transportation costs exceed what the formula provides for the district. Lakewood had a pilot program for transportation, the LSTA, but funding did not capture the total cost.

New Jersey has one of the best educational funding systems in the United States. It is a state with high funding for low-income districts. The New Jersey is fair and is second in the nation in school funding. Her report was a State report, not a local one.

The SFRA is a national model of school funding, but Lakewood is an extreme case; this has caused constant fiscal distress, with transportation and special education eating up the budget, so the money must be taken from other areas. The decline in academic performance correlates with it. The district is academically performing in the lowest 5% of all districts across the state in nearly every tested area, a significant decline in relative performance. The SFRA does not dictate how money should be spent, but some costs are mandated, such as special education and transportation. These two areas get their funds first and the rest of the budget has to support all other education expenses. Lakewood spends far less on regular education than the formula suggests is adequate. Compared to districts with 3,500 children or more, Lakewood spends about 50% less than other districts in classroom-instruction costs.

Changes are necessary in the funding structure: it must take into account that the Lakewood school population is not reflective of the number of students who live in the district and attend non-public schools. The funding is not adequate for Lakewood, especially in special-education costs. Lakewood spends about \$40 million more than a district its size should spend due to special-education and transportation costs.

Based on Dr. Farrie's analysis, the State does not pay enough because it is per-pupil aid in theory, but not in practice. The district received \$4.5 million in 2017 for extraordinary aid for special education, and received \$4.1 million in 2016, and \$3.1 million in 2015. It was 2.4% of the State's extraordinary aid in 2016, and 1.9% in 2015.

New Jersey has 1.4 million public school children. Lakewood has 6,000, representing one-half of 1% of the state population, but the district received 2.4% of State extraordinary aid for special-education students. Dr. Farrie believes special-education aid should be based on the percentage of children in special education. Students placed in out-of-district placements are enrolled in the public school system. These students are

counted for equalization aid, categorical aid, special-education aid, and extraordinary aid. When she said Lakewood was underfunded, she considered extraordinary aid.

The SFRA provides for transportation per pupil, which is mandated under the SFRA based on distance from school. The formula provides the same amount, but the district does not spend that amount. Lakewood was forced to pay for transportation for non-public school students, money that it could be spending on public school students. She was not familiar with Lakewood spending money on public school transportation. She was not familiar with the Bacon cases in particular. Lakewood had been spending too much on courtesy busing and non-public school transportation. Dr. Farrie stated that Lakewood's transportation cost exceeded the State formula, but it was contingent on local funding and that was included in the adequacy budget.

She had no idea if Lakewood could raise additional funds. The State does not restrict local fundraising, but there is a 2% annual cap on how much the municipality can raise through taxes, and so it has limited ability to raise funds. She was not familiar with whether Lakewood Township had attempted to raise funds through special questions on the ballot.

Dr. Farrie's report stopped analyzing scores in 2014; she did not dispute that PARCC scores were improving, but it would not have affected her opinion.

Dr. Farrie concluded that the SFRA cannot address Lakewood's conditions, and that changes to the SFRA formula were necessary to ensure that Lakewood Township's public school students received a thorough and efficient education. Changes were needed to the SFRA as it functions in Lakewood. Working to reduce out-of-district special-education placements would help address Lakewood's budget, although she wants students in their proper placements. Working to make the walk to school safer in the Township might save some costs of hazardous-route busing.

She believed that the Lakewood school district was an outlier, although she had not studied other districts in detail.

David Shafter is a state monitor in Lakewood. He has a bachelor's degree and a master's degree in accounting; he is a certified public accountant and a certified school business administrator. He later worked in Willingboro, New Jersey; he then became a state monitor in Beverly, New Jersey. He has also worked in Camden for two years as interim business administrator, then worked in fiscal compliance.

Shafter is employed by the DOE to go into distressed school districts to monitor them. He has worked in Lakewood since 2014 as a fiscal monitor with Michael Azzara, who arrived there first. Shafter reports to Glenn Forney in the DOE, who is responsible for all state monitors.

The State uses NJQSAC evaluations of school districts for determining performance and to see if a district is below level. Lakewood is in a deficit.

As a state monitor in Lakewood, Shafter attends board meetings, and is involved in finances, budgets, purchasing, and grants. He approved the school year 2016–2017 and 2017–2018 budgets, prepared with the assistance of an able business administrator. At the time of this hearing, the 2018–2019 budget was being worked on with the business administrator.

When Shafter was first placed in Lakewood in the fall of 2014, there were concerns with record keeping and finances. There had been poor record keeping and there were issues with purchase orders. Financial records were not accurate, and the budget was about 50% accurate. There was a lack of purchase orders for out-of-district placements. Monthly records were not closed timely and ran three to four months behind. On other purchase orders, when a line item was at its limit, items were charged elsewhere. Lines were over-encumbered, and a report would show negatives. The records could not be relied upon; the position-control roster was not reconciled with the names of staff. This presented problems for tracking expenditures.

Corrections to the budget started during the 2015–2016 school year, and this affected planning. The budget was then 90–95% accurate, as it was corrected by 2016–2017 with correct purchase orders and funds allocated for anticipated expenses. He has

not discovered any expenditures that were not legitimate. Over \$1 million in extraordinary aid was found and corrected.

When he first arrived, the *Comprehensive Annual Financial Report (CAFR)* findings showed the numbers were off. Ideally, what is wanted are no findings in the CAFR. Having twenty-three to twenty-four findings in a CAFR is a high number. Since he has been the monitor, the number of CAFRs has gone down. This year it was reduced to eight, which was a definite improvement. The issues he identified have been improved.

Also, when he first arrived, some special-education students had not been counted correctly, and some students placed in-district had not been included as special education students. Some students had been eligible for additional financial aid but as no application had been made for financial assistance for them, money had been left on the table. That problem was also corrected.

Also, when he first arrived, Lakewood provided courtesy busing, but that has now stopped. Now Lakewood provides non-public school busing through the LSTA. The District pays a per-pupil amount of \$1,000 per year. Prior to formation of the LSTA, the cost per pupil was \$650. The cost has gone up under the LSTA for two reasons: the actual cost increased from \$650 to \$710 in the first year, and the number of students being transported increased.

The first budget he worked on was for school year 2015–2016 and was extremely responsible. No deficit was apparent at first, but in October/November, they realized there would be a deficit for the rest of the year concerning transportation. Bids went out and were supposed to save money, but they did not.

The referendum to fund courtesy busing had been defeated and the DOE directed Lakewood to continue it. The State advanced \$4.5 million in aid for this. It would have been dangerous to stop busing for the children because of traffic and some hazardous routes, so that was the reason to cover the transportation deficit.

For the 2016–2017 budget, they realized they had a deficit, and that for the first time there would be layoffs. The budget was \$5 million short, so the State loaned Lakewood \$5.4 million to avoid layoffs and increases in class size. Without the loan, teachers would have been released. Courtesy busing was eliminated.

Lakewood was short of funds because of increases in the costs of programs, the 2% tax cap, and mandated costs for special-education placements. Transportation costs increased for the LSTA. Those costs had been less than the cost assigned to the LSTA and was more than tax increases could sustain. The budget was cut as much as possible, an assistant principal was let go, and anything that could be taken from the budget was done, such as leasing textbooks. Leased/purchased buses brought some transportation into the district.

Transportation for 2016–2017 was very efficient, and the budget was approved by the monitor. They started tiering (starting school at different times) and filling the buses. Lakewood High School started at 6:45 a.m. and provided breakfast before school; 7:45 was the second tier, and 8:30 was the third.

The 2017–2018 budget was never passed. It was approved by the monitor in May/June (usually submitted in March and approved by May). The budget was not approved by the Board because “it did not provide the services they wanted.”

The 2017–2018 budget had some deficit, but by March the deficit was \$13.5 million. After the budget was approved, the superintendent did not recommend the budget and the first draft was not approved. (It included cuts to guidance, cutting 80–100 teachers, and cutting the library, extracurriculars, and athletics.) Class size would be in the thirties in elementary school, and in the forties in the middle school. The budget was finally adopted after negotiations with the DOE, with \$11 million cut and \$2 million for paybacks of previous loans waived for one year. Some cuts remained, some athletics were cut, some co-curricular activities were cut, and some other reductions were made in non-public school-related services. After the State’s loan of \$8.5 million, the budget was acceptable in its bare-bones form.

The district cannot cut any more from special education or transportation, so cuts come from regular education and administration. New Jersey has been a model for class size. The average in grades K–1 is twenty-one students; in grades 2–8, twenty-two students; and in grades 9–12, twenty-three students. But in Lakewood, it is twenty-four to twenty-five in grades K–1, and twenty-eight to twenty-nine in grades 2–8. The effect is an increase in class size, and this affects education, administration, libraries, media, etc. They do not want to cut security.

Lakewood does not have a spending problem; it has a revenue problem. Shafter goes over the budget carefully; he makes sure the budget is correct; he looks at projections. He believes that on the expense side, the budget is not an issue.

Some special-education classes have been opened in Lakewood, with additional classes for special education and pre-school disabled. In 2018-2019 the pre-school-disabled class will be expanded, and it is in the budget. Instead of spending for out-of-district schools, keeping students in the district (first graders) will save money. That program started this year. Beyond first grade, the district looks for least restrictive environment. It is hard to bring students back from previous out-of-district placements. By the district starting programs for younger students, a long-term solution is provided.

Comparing Lakewood to Abbott districts, Shafter noted that he had previously worked in Trenton and Camden. Camden is urban and Lakewood is not considered urban. Camden has a large public school population and a smaller non-public school population. Camden had no problem matching expenditures to revenue—it was easy to balance its budget. One hundred percent of both Lakewood and Camden school students are entitled to free breakfast and lunch.

Lakewood has a unique situation in its student population. Usually the number of public school students in any district is greater than the number of non-public school students. For example, Camden has 13,000 public school students, but only a small percentage of students attend non-public schools. East Windsor has the same situation. But in Lakewood there are 6,000 public school students and 30,000 non-public school students.

The challenge is that when taxes were raised, they covered public schools and State aid was increased. But now, in Lakewood Township, the number of public school students stays about the same, while the non-public school student population goes up about 10% per year. This affects the budget in transportation, because Lakewood has to pay the LSTA \$1,000 per student per year, which actually comes to about \$710 per student after State aid is factored in. Usually taxes and State aid are sufficient for most communities to cover this expense, but in Lakewood, even with categorical aid and equalization aid, it is not enough because the equalization aid and the categorical aid are frozen. It is not enough because increased taxes do not cover the costs.

In 2016–2017, an additional 2,000 non-public school students needed transportation. The number for 2017–2108 was not then known. Out of the increased number of children living in the district, some will enroll in public school and need placement and transportation. There are over 100 non-public schools in Lakewood that are not calculated into categorical aid.

For 2017–2018, Lakewood received a \$8.522 million loan. Two million dollars was for deferred repayment. One million dollars was received from the Township to pay for athletics.

The budget for 2018–2019 was then in preliminary stages and showed a potential deficit of \$17 to \$23 million. If nothing changed from the 2017–2018 budget, and no salary increases were included, plus \$3.2 million to be paid for increased benefits, plus \$5.9 for out-of-district tuition, plus \$2.283 million for transportation, plus charter-school costs of \$728,000, the total projected deficit was \$23,290,988. The district already owes the State DOE \$8.5 million, plus \$4.5 million, plus \$5 million, for a total of \$18 million. Loans given by the State must be paid back within ten years, and a state monitor must be in the district as long as the debt is outstanding.

On February 5, 2018, a letter was sent to the acting Commissioner indicating that Lakewood did not want to fire teachers. The monitor has the power to fire teachers, and it is part of his role, if necessary. The budget must be completed by the end of March,

and the district has two options: to leave the budget unbalanced and to write to the DOE for more assistance, or to reduce the budget line by line the way they did the previous year. As for the first option, they can ask the State for more aid to balance the budget. The DOE refers the budget to the county business administrator, who reviews it. By law, the budget must be balanced. In 2017, he made suggestions. The letters for a reduction in force went out. There is time yet to resolve issues, so those letters may be sent and retracted later. He had no opinion yet of what he would do for school year 2018–2019. Each year stands on its own.

The local fair share in SFRA is broken down into two categories by weighted enrollment. The cost factor is how much it costs to educate each student. The adequacy budget is the local fair share without equalization value times a percentage of gross income. State aid is supposed to make up the difference. Adequacy has nothing to do with local fair share. All educational aid is controlled by the Legislature. Categorical aid is frozen; it is set by the Legislature's annual appropriation budget. The amount of equalization aid, the 2% tax cap, and the LSTA are all controlled by the Legislature. Lakewood Township has no ability to raise taxes and is at the 2% cap. One special question on the ballot to raise taxes failed by a huge margin.

Shafter has not spoken with Lakewood Township about contribution to the school budget. One thousand dollars is the State-aid amount in lieu paid to parents of non-public students not transported. A bid is rejected if it costs more. The \$1,000 is calculated with the first \$710 from the local district; the amount from \$884 to 1,000 comes from the State.

Courtesy busing for students in K–8 is one-half to 2 miles and for grades 9–12 it is one-half to 2.5 miles. Courtesy busing now costs Lakewood Township \$1.3–1.5 million per year, but if it were eliminated, there was no guarantee that Lakewood Township would provide the funds to the Lakewood public schools. Courtesy busing could be reduced if sidewalks were added, crossing guards were increased, and hazardous routes were reduced. In summer 2016, a Lakewood consultant met with officials to plan to increase sidewalks, and there was some discussion about this.

The budget is very tight and has no room for cutting. Lakewood needs increases in revenue, either increases in State aid to full funding or increases in taxes. Lakewood Township could use its surplus, or a formula so that some portion of those non-public school students could be counted in the adequacy budget.

If Shafter had more money, he would balance the budget: he would pay for the transportation, health insurance, and charter school expenses that are required.²⁵ He would fund new facilities for Lakewood, especially for the middle school, so that special education could be offered in-district which would save the district money. Class size could be reduced, and languages could be offered. More money might be needed in the beginning, but savings would be afforded over time.

Michael Azzara started working for the DOE in 1978 and is the leading New Jersey state monitor. There are about ten monitors in the State. He was appointed by the Commissioner to be the state monitor for Lakewood, where he served for four years prior to April 2018. He oversees finances in the district and reports to the Commissioner through Glenn Forney.

He has forty years of experience in education and was the director of fiscal policy in Paterson, a state-operated school district, as an assistant superintendent. Previously he worked in Jersey City, Camden, and Newark. All were state-operated school districts. He has a bachelor's degree in business, and a master's degree in education.

Lakewood has a revenue problem, not a spending problem. They have made every reduction possible to maintain education. The budget is what is needed to get the county to sign off on it, and it really cannot be cut any more. Special-education expenses cannot be cut. Security cannot be reduced. A deficit is anticipated this year.

The State set up the LSTA and paid \$1,000 per student. Transportation was brought in house and it is efficient. Courtesy busing was put out for a \$6.2 million referendum to pay for it, but that expense was rejected by 98% of the voters the following

²⁵ Lakewood has one charter school with 150 students. The budgetary impact is minimal.

January. After that, courtesy busing was eliminated by the district; it is not on the table. They used a tiering system, but the bids were so high, they could not do it for the following year. So, the Legislature created the LSTA consortium for busing.

One referendum passed in the district which was for a building roof repair and an HVAC system.

Monitors have proposed ballot questions, but the Lakewood BOE has rejected them. Consequently, they did not bother to spend money on a referendum.

Lakewood Township was not considered an Abbott district, such as Newark, Jersey City, and Paterson, but shared some characteristics, such as free lunches, etc. The Abbott District Factor Groups (DFGs) were generally classified as district factor A and B.²⁶ Lakewood was not included as an Abbott district because it was not considered poor. The Abbott rulings were supposed to permit poorer districts to have sufficient financial support to meet district factor I-J standards, but there was not enough money in the state budget to ever meet the I-J standard. Abbott was abandoned in the SFRA.

The problem with the budget is that the school-funding formula is frozen. The non-public school population (30,000 children) is growing, and this puts stress on the budget, particularly on the costs of special education. The SFRA uses census data and calculates that approximately 15% of enrolled students require special education, but in Lakewood the percentage is so much greater. The Orthodox children attend non-public school yeshivas, but generally, if they have a learning disability, or need special education, they are enrolled in the public school district.

Lakewood spends about \$30 million for special education but is funded for only about half the classified students in the district. This puts a strain on the taxpayer, as the

²⁶ The DFGs represent an approximate measure of a community's relative socioeconomic status. The classification system provides a tool for examining student achievement and for comparing similarly-situated school districts in other analyses. Subsequent to the Abbott IV court ruling, the DFGs were also used to define the group of school districts on which Abbott v Burke parity remedy aid would be based. District factor groups range from A (the poorest) to J (the wealthiest) districts.

township has to support public school services. Other municipalities would not put the same strain on taxpayers.

This municipal overburden puts a strain on the tax base and the State needs to develop a budget that takes that into consideration. Thirty thousand non-public school students put a burden on the district, as that kind of population creates expenses that are not addressed by the SFRA school-funding formula.

Student enrollment drains the adequacy budget. The local fair share of \$102 million would not change, but the adequacy share could improve. Lakewood needs more revenue, whether it comes from the Legislature or Lakewood Township residents, but Lakewood is capped at what it can raise, although it has a large tax base. The amount of aid appropriated is controlled by the Legislature. The levy cap is also controlled by the Legislature.

When Azzara came into the district as monitor, he was familiar with aid in lieu of transportation. But after two years, he discovered that the district was sending money directly to non-public schools by checks and not to the parents. Lakewood did not own its own school buses in 2015, just a couple of vans. They saved money for the district by purchasing buses and doing some transportation in house.

The Legislature determines school financial aid based on municipal income and property wealth, which equates to an ability to pay for the local schools. But aid is also a product of how much the State has available to it to assist the local districts. The per-capita income of Lakewood Township is low at \$15,000, and less than half of the state average, but the median age of the population is also very low.

Melvin Wyns testified that he worked in the NJ DOE Division of Finance for thirty-one years. For thirteen years until his retirement from the DOE in 2001 he was director of the Office of School Financing, where he was responsible for all twenty-seven major school-aid programs in New Jersey designed to provide a thorough and efficient education. He reviewed school-aid applications, insured that payments were timely

made, and conducted audits. While he worked in the DOE, there were many major court decisions affecting school funding.

Following his retirement from the State, he went into consulting, until his final retirement in 2017. In his consulting firm, he has worked for municipalities and school districts on school-funding issues and regionalization issues. He has testified on the SFRA and regionalization and is considered an expert in Abbott XX and Abbott XXI for the Special Education Law Center.

In Abbott XX and Abbott XXI, the plaintiffs challenged the constitutionality of the SFRA, and the Supreme Court delegated those matters to a special master, Hon. Peter Doyne, J.S.C. In Abbott XXI, the third year of SFRA, the law was underfunded. Wyns testified as an expert in that case.

Wyns has continued to follow school funding since his retirement and has testified as an expert following his retirement. He had a consulting agreement with Lakewood from January through June 2018.

Wyns was accepted as an expert in school funding.

Wyns started with Lakewood in July 2003 and was a consultant to the BOE. From 2003 to 2018 he had various consulting contracts with Lakewood covering six to eight years. The tax levy was repeatedly voted down, and then the BOE would have to go to the township for funds. He was supposed to be an intermediary, but it did not work out that well. He is not now under contract with Lakewood.

After the SFRA was enacted in 2008, Wyns identified earlier problems that had not been resolved with the new law. The school-funding formula created problems for the Lakewood school district because of its unique distribution of sectarian to non-sectarian students.

Wyns reviewed the May 7, 2018, letter written to the Lakewood superintendent by Forney in which the State approved \$28 million in advance State aid for the 2018–2019

school year to balance the budget. This aid provided additional revenue to Lakewood as an advance (loan) for the purpose of enabling Lakewood to provide a thorough and efficient education to its students beyond SFRA funding. The State could only do this because Lakewood has a fiscal monitor in place. The revenue request must be certified by the State BOE to the state treasurer before the money can be released.

The May 7 letter was sent on the budget-cycle deadline for Lakewood to have its budget approved for the 2018–2019 school year. Absent this revenue, Lakewood would have had a shortfall and would have had to cut staff.

Wyns reviewed the letter of October 26, 2018, which indicated that when the Appropriations Act was passed, Lakewood’s funding was reduced by \$1,566,821 million, creating a shortfall. Lakewood was notified that it could not raise taxes; it could either cut the budget or apply for emergency aid for districts in financial distress. The letter approved the emergency request so the budget would remain sound. A total of nearly \$30 million in funding was provided to Lakewood by the State to provide a thorough and efficient education.

Wyns reviewed Commissioner David Hespe’s letter dated June 23, 2016, to the state treasurer, in which Hespe asked for \$4.5 million in order to provide thorough and efficient education for 2016–2017 school year. He also noted a similar request for 2016–2017 sent to the acting state treasurer requesting \$5.4 million in order to provide a thorough and efficient education for Lakewood’s public school students.

He reviewed the letter dated November 9, 2017, in which former Commissioner of Education Harrington asked for \$8.522 million for State aid for the 2017–2018 school year, again certifying that without it, the school could not provide a thorough and efficient education for Lakewood’s students.

All these letters showed that the four advances in State aid (loans) were made to assure that the students received a thorough and efficient education.

Lakewood needed the loans because the SFRA is not working in Lakewood and does not provide adequate resources to Lakewood. The DOE has been able to intervene because Lakewood has a fiscal monitor and the State has intervened to provide a through and efficient education.

The statute provides that the State-aid advances of \$4.5, \$5, \$8 and \$28 million must be repaid within a ten-year period out of future State aid; thus, money will be taken away from future students to serve present ones. This is money that must be paid back; this year they paid back \$3 million to the State from the money they received.

In school years 2004–2005, 2005–2006, 2006–2007, and 2007–2008, Lakewood received aid from the State for about four years through budget footnote language and received about \$1 million in grants from the State. There have been special appropriations for Lakewood in previous years. Then-Commissioner Librera was convinced that Lakewood had school-funding issues. They understood the problem, and they had to convince the governor and Legislature that Lakewood had a problem. The advances were not paid out of the goodness of their heart; it was because of Lakewood Township's unique demographics.

Wyns has written papers for Lakewood relating to Lakewood's unique demographics. He wrote in 2008 about the SFRA and pointed out problems with Lakewood's demographics that continue. These problems pre-dated the SFRA and remain. The SFRA is not working in Lakewood, as is seen in the May 7 letter regarding the increased amount of aid. The situation is worsening, and worsening quickly, under the SFRA.

Lakewood Township's demographics show a rapid population increase. The public school population is below 6% of total population; typically, it is about 16%. Lakewood has a large non-public school population. Forty-one percent (41%) of the township population is below the age of eighteen; on a statewide basis, it is 22%. Lakewood Township is double the average. Lakewood Township has had a large increase in property value and income, which, because it is disproportionate to the growth in the rest of the state, negatively impacts the public schools.

The largest calculation in State aid is equalization aid, which is based on property value and income. Lakewood's equalization aid is disappearing because of its increase in property value, and Wyns predicts that it will soon be zero. This is a consequence of recent amendments to the SFRA: adjustment aid and equalization aid will be gone, and only categorical aid of special education and security aid will be left.

In his opinion, more money is needed. Next year, \$43–45 million will be needed. Lakewood will need \$30 million just to sustain this year's level without any enrollment changes, or additional demand because of non-public school students requiring special-education services.

The only thing the State can offer is advances; it has no ability to provide grants. It is a non-sensical cycle leading to disaster because the amount to be paid back will become most of the aid Lakewood receives.

Funding will be reduced in the new statute. Lakewood now owes about \$40 million. Averaged over ten years, it is about \$4 million per year. It is in the budget now at about \$3 million per year. In a couple of years, \$70 million will be needed to be paid back.

The loans were made because the SFRA is not doing what it is supposed to be doing, providing adequate revenues for the district to provide a thorough and efficient education for its students. It is possible mathematically that if this process continues, all the State aid that is supposed to be used for providing children with a thorough and efficient education will be used to pay back the loans. The SFRA cannot provide revenues for a thorough and efficient education. The SFRA is supposed to provide funding for districts to provide a thorough and efficient education. It is a question of how long the State allows this process to continue.

State aid is not going to grow. Two things occurred after May 7, 2018, that negatively impacted State aid to Lakewood: first, the Appropriations Act language for the 2018–2019 school year reduced aid by \$1.5 million (which is why Lakewood received emergency aid); and second, adjustment aid was eliminated for school districts for 2018–

2019. Chapter 67 removed adjustment aid permanently, and there will be no more adjustment aid in the future. (The State-aid cap was also removed, but this would have no impact on Lakewood.)

Based on recent legislation, Lakewood's equalization aid will disappear next year or the year after and will not be offset by any State-aid advances. If the loan process continued for three years, Lakewood would owe \$140 million, and most of the State aid advanced would be money owed back to the State. The larger the property value and income, the lower the school aid from the State, relative to the public school population, and not to the total number of students in the district. The relative wealth per public school student because of the growth in population and the increase in property value and income causes Lakewood's local share in the school-aid equalization-aid formula to be too large, because the district appears to be disproportionately wealthy relative to the small public school population. The demographics attached to property value, income, and special-education enrollment all must be addressed. The formulas and their components must be tweaked by the Legislature to help Lakewood.

Lakewood Township cannot just raise taxes, because of the 2% tax-levy increase cap. Lakewood has been doing this, but it cannot have a referendum except for things not required for a thorough and efficient education, as the law does not permit Lakewood Township to do this.

Lakewood requires legislative action; there is nothing the DOE can do administratively except to provide the advances. The DOE is doing everything it can do.

Wyns understood that the SFRA was designed to meet the constitutional mandate to provide a thorough and efficient education. The previous act relied on discretionary action, which was ruled unconstitutional. Funding for a thorough and efficient education is the continuing obligation of the State. It should be predictable for appropriate budget planning; it should be formulaic and not discretionary. It is unconstitutional if State-aid advances are unpredictable and subjective and not continuing until a decision is made. The intention in Abbott was to have a unitary funding formula to enable all districts to provide a thorough and efficient education, and it is not happening in Lakewood.

Witnesses for Respondent:

Kevin Dehmer has been with the DOE since 2007 and is the assistant commissioner of the Department of Education, assigned to the Division of Finance. As assistant commissioner, he has broad responsibilities, overseeing school facilities, grants, management, state monitors, and non-public and choice schools. He is acting commissioner in the event the commissioner is absent.

Since 2008, Dehmer has worked with the SFRA, a formula passed by the Legislature for school funding. The law considers enrollment as the main input to the formula. This feeds into the adequacy budget for the State and local districts, as well as into the categorical funding available for specific items. The state has 577 school districts. The adequacy budget does not count non-public school students.

The adequacy budget is calculated based on enrollment, with different factors weighing in costs for ESL students, needy students, speech-only services, and special-education services multiplied by a base amount. The local component is the local fair share: it equalizes property value and income and applies a rate which determines the dollar amount each district can pay to support the local schools. The State component is the equalization aid, which is the State's contribution to school funding. Two-thirds of special education is equalization aid, and one-third is for categorical funding, plus transportation aid and security aid (which is based on the number of students and the number of at-risk children).

On March 15, 2018, the Governor's budget message was sent out to all school districts providing a detailed outline of the calculation for the district following the funding formula and how the proposed aid was calculated. Lakewood received that notice. On July 13, 2018, notice was provided to the district to show the changes to the proposed funding amount after the Appropriations Act was modified. The adequacy budget was calculated on enrollment in public schools, and transportation for non-public school students was counted as required by the SFRA. The adequacy-budget calculation considered lack of English proficiency and low-income students (who receive free or

reduced lunch) in its weighted formula. Some districts spend over or under their adequacy budgets.

The local fair share takes into account property valuation and district income. The data comes from other State agencies like the Department of Community Affairs and the Department of Taxation. The local fair share is a calculation in the school-aid formula and considers the local tax levy. There are restrictions as to how much a district can raise. It is a 2% cap raise, but some exceptions were included in that law such as an allowance for increased enrollment and health-care costs. Districts can bank their cap. The levy cap can be exceeded, but districts must have ballot initiatives to increase the levy over the cap.

There are two types of State aid: equalization and categorical. Transportation categorical aid includes regular-education students and special-education students who do not require special services for transportation as one category. For special-education students who require an aide, a higher level of categorical funding is provided. The totals were \$11,144,460 for the first category and \$2,312,507 for the second.

Special-education categorical aid takes the district's total enrollment multiplied by 14.92% (statewide average classification), so using the \$17,343 per-pupil amount and adjusting that for the geographical cost, it is multiplied by one-third. Since two-thirds is already included as equalization aid, it is multiplied by one-third, for a total of \$5,007,392. The reason for the two-thirds, one-third split is to ensure that each district receives some aid for special-education costs. Security aid is calculated by the total number of students in the district, and also takes into account the concentration of low-income students in the district. Security aid and low-income aid totaled \$2,722,718.

Special-education extraordinary aid is outside these calculations; there is a formula for this. Extraordinary aid covers a portion of special education to cover both in-district and out-of-district placements, and is reimbursement based on the cost and the prior-year expenditure. Separate spending is included for non-enrolled students, but it is not included in the SFRA.

During the 2011–2012 grant year, the district received the most nonpublic school IDEA basic funding in the state. Lakewood received \$4 million, approximately 18% of total state non-public IDEA basic funding; the next district received \$700,000, a fifth of what Lakewood received. A recommendation had been made in 2014 for the district to determine whether other IDEA-approved programs or services could potentially benefit a greater population of non-public school students with disabilities and be a better use of the aid received.

The approximately 31,000 non-public school students in Lakewood Township make up approximately 25% of non-public school students in New Jersey. In 2017, Lakewood received 2.33% of total State aid, even though its share of total public school enrollment was less than 0.5%. Out of 577 school districts in New Jersey, Lakewood received a total of 21% of other non-public school aid. In 2017, the State provided approximately \$62 million in total aid for public and non-public school students to Lakewood Township.

Dehmer noted that Lakewood’s tax-levy history showed it was consistent, but only started to increase in 2015. In the early years, Lakewood was taxing a little above fair share, and was very close starting in 2014, but from 2014 to 2018 they were below local fair share. Lakewood’s school-tax rate for K–12 districts with 5,700 to 6,300 students compared to the statewide average showed that Lakewood was below the state average and was below other districts.

Lakewood has had a fiscal monitor since 2015. The monitor must remain with the district until the State-aid loan advances are repaid. Districts must meet benchmarks. Dehmer does not communicate frequently with the monitor. The monitor has authority to override the local BOE and adopt a budget with a tax increase, but it is limited to the 2% tax levy, with some exemptions.

Lakewood received State-aid advances in 2015–2016, 2016–2017, 2017–2018, and 2018–2019. Funding for Lakewood increased in 2018–2019. Loans were requested to balance the budget and to provide a thorough and efficient education, but he was not involved in that decision.

The commissioner is the authority who requests the supplemental-aid advances in funding: it is not determined by the formula or by the number of children in the district. He or she determines the amount based in part on the recommendations of his office. There are no negotiations. It is based on the recommendations of the monitor, office, and district. It is based on need, and a thorough and efficient education is the benchmark.

Some of the money received by the district is necessary for the paying back of old loans. The \$28 million loan would have to be repaid, so some of it had to be used to pay back the State. The Commissioner recommended aid advances, which are generally paid back over ten years. The advances take into consideration not just the budget deficit, but also the need to repay previous aid advances.

The problem is an unbalanced budget. Local revenues must be maximized. High past non-mandatory expenditures can cause an unbalanced budget. The state monitor has been in Lakewood for five years. Dehmer reviews the budget plan set by the monitor: the monitor has plans to move the district ahead, Dehmer approves expenditures and plans to lower expenditures. Lakewood needs to do a more strenuous job of planning.

The SFRA adequacy budget is the school-funding formula that estimates what is necessary for a thorough and efficient education. It has nothing to do with Sections 192 and 193 aid. The loans are not based on a formula, they are determined based on the budget submitted by the district and items indicated to the DOE by the monitor. Dehmer does not know the exact expenditures, or tuition paid to schools outside the district. The loan is based on getting to a balanced budget and local control with the monitor, who reports to Glenn Forney.

Dehmer did not recall the months the advance aid loans were made to the district. Most districts start budget planning well in advance, as it is a statutory process. The districts are notified of the Governor's budget proposal, but do not know what it entails until the budget is signed. Lakewood needed more money in its adequacy share and has received the largest State advance. Ultimately, they are all trying to get to a balanced

budget, and, with State-aid advances, the district can provide a thorough and efficient education.

Dehmer had no day-to-day knowledge of the district. He just looks at expenses and revenue. The SFRA is funded every year according to the annual Appropriations Act but is not as fully funded as it could be.

Christopher Soleau testified that he has been employed by the Office of Legislative Services as a principal auditor since 2001. He is a field supervisor and assists in conducting investigations. He has a Bachelor of Arts degree in accounting.

As a trained auditor, he audits state agencies and programs with the goals of improving accountability, efficiency and the effectiveness of public spending. He has personally been involved with audits in Trenton, Asbury Park and Lakewood.

An audit is comprised of three phases: planning (meeting with personnel, reviewing records, reports and data); testing (reviewing documents and verifying processes and control; and reporting (compiling the audit, drafting a report, and obtaining approvals).

The site investigation in Lakewood commenced in January 2013 and ended in June 2014. The auditors found a general fund deficiency and the district was placed on an audit plan.

The audit report was issued in August 2014. It noted a few issues involving financial transactions that were not consistent with government auditing standards, a projected deficit, a lack of control environment leading to a lack of stability, and a growing population with flat property taxes which affected the budget and created a deficit. The report made recommendations for long-term goals.

The review noted that state and federal grant programs under Title I that were provided to low income students, showed that reconciliation procedures were lax. Title I

waivers lacked supporting documentation. The board had approved contracts without review, and other expenses were questionable.

Programs (under Sections 192 and 193) provided for auxiliary services, compensatory education, ESL and home instruction, and remedial and speech-language services. Lakewood received \$13.9 million in fiscal year 2012, and \$14.8 in fiscal year 2013. Other areas of concern in the report included: compensatory education, speech-language instruction, home instruction, school visits, legal costs, purchasing procedures, lease agreements, information technology, business continuity, special education tuition, payroll and personnel, criminal history background checks, final leave balance payments, salary allocations, employee contracts and salary increases, leaves of absence, observations, and the IDEA program.

After his report was issued, it went to the district and some of the identified problems were fixed.

Catherine Anthony is a dispute resolution specialist with the DOE. She opens mediation and due process files and is assigned special projects. Files are retained for twenty years and a data base is used to track cases from filing through outcomes.

Anthony researched agreements that Lakewood had reached on special education due process matters appealed to the OAL and found that 75 special education settlements had disenrolled those students from the district between 2013 and 2018.²⁷ The total cost to the district for these 75 students was \$10,176,771.²⁸

Raymond J. Zirilli, Jr., has been a senior transport specialist at the DOE for almost twenty years. His primary role is to gather data for paying state aid and regulating student transportation; he has other duties as well.

²⁷ One student was disenrolled in 2013; 26 in 2016; 37 in 2017; and 11 in 2018. Other years were not provided. This is not the total number of special education students in the district.

²⁸ These settlement agreements were reached between parents acting on behalf of their children and the district, approved by the monitor, and then submitted to an ALJ in accordance with N.J.S.A. 18A:46-14(h).

In 1999 an audit was performed in Lakewood to see how efficiently the district was transporting students and their particular transportation needs. For example, if the district was running separate male and female buses, they would be running buses with fewer students and thereby running more buses than necessary. More efficient districts staggered bell times, and he needed to know if Lakewood was coordinating these. These concerns were shared with the district.

Zirilli noted that Lakewood's non-public school students were receiving courtesy busing. Courtesy busing is busing provided at the discretion of the local board of education and at local taxpayers' expense; it was not paid by the state as the state just pays for mandated busing which is two miles for elementary students and 2.5 miles for high school students.

Zirilli referred to the District Report of Transported Students (DRTS) which is the data collection to process state aid for transportation. The data consists of mandated transported students with sub-categories of actually transported and aid in lieu (AIL) which is the payment provided to parents equal to a maximum statutory amount that changes with each budget year to arrange for their own transportation. Aid is paid to the parents in lieu of the district providing transportation. The amount was \$1,000.

After 2015-16, New Jersey established the Lakewood School Transportation Authority (LSTA) with aid in lieu. The district paid the AIL to the LSTA to provide mandated transportation services for non-public students. By comparison, in 2009-2010, the district transported 8,914 students and provided AIL for 156; by 2016-2017, the number went to 8 transported students and 15,919 transported by the LSTA.

Robert Ortley testified that he was employed as a manager of the New Jersey State Aid Audit Unit for nineteen years until he retired after 38 years with the State. The unit reviews and evaluates a school district's compliance with the requirements of the State division of finance to ensure that school aid is properly calculated by comparing the district's data to that on file with the state. The standard methodology is to compare lists of data submitted with accounting records, purchase orders, and other documents to see if the district's calculations were accurate.

An audit was conducted in Lakewood at the request of various government officials, and the final report was submitted on May 19, 2014. The audit used information as of October 14, as the statute required the last enrollment data on or before October 15 of that audit year. The purpose of the audit was to determine the accuracy of the data based upon enrollment records and accounting records of the school district for State aid reporting purposes.

The Application for State School Aid (ASSA) is an annual report filed by every district in the state to report the number of students enrolled. Deficiencies in the audit impact the amount of state aid a district receives or has to refund to the state. The linchpin for all reporting is the official New Jersey school register which is a contemporaneous and continuous document which indicates daily attendance and absence for the school year. The official New Jersey school register reflects daily attendance for the entire school year as compiled by the Office of Fiscal Accountability and Compliance (OFAC). If there is a difference, it can impact State aid. The audit showed that Lakewood had a disparity in student enrollment of about 84 students.

Within the resident enrollment count, the number of students who have limited English proficiency and those who are eligible for free or reduced meals is significant because the base aid factor of the funding formula provides extra aid for these at-risk students. In various subset categories that can provide for additional funding and impact funding, the results were also disparate. The number of students eligible for free or reduced meals showed a disparity of 207; for Limited English Proficiency a disparity of 96 students; and for transported students in regular and special education a disparity of 326.5. These audit exceptions were reported in September 2013 and the State worked with the district to reduce them. Ultimately some adjustments were made.

These students represented approximately \$2,308,500 that the district could have lost had the district been fully funded under SFRA. Recommendations were made to the district to ensure that future state aid would be calculated accurately. With such a high volume of data, they met with the district to review a draft so that the district could see the volume and magnitude of the findings.

Generally, the district's time to respond to the OFAC report is 75 days. The district can accept the report, appeal the report, or appeal specific findings in the report. Lakewood formulated a corrective action plan (CAP) to ensure the accuracy of its reporting which was submitted to the agency and shared with others in the DOE in finance and field services. Lakewood was advised by letter that its CAP was approved by the state. Follow-up meetings with the administrators were held and some adjustments were made. The final State aid recovery was reduced to about two million dollars.

According to the fiscal year report ending in 2018, \$2,305,605 was owed to the state due to this audit if the district had been fully funded under SFRA but it had not been. Ultimately, for that budget cycle, it was recommended that the district reimburse the state for one-fifth of that total amount to be recovered by the DOE. However, Lakewood still owed the State \$17,198,843 in outstanding loans as of 2018.

Accepting the DOE's numbers as correct as far back as 2011, Lakewood Township then had 5,248 students in the public school system and was transporting 13,676 students, more than 50% of the student population.

Glenn Forney is the deputy assistant commissioner of finance for the DOE. He has significant experience in budgeting and financing for school districts of the state. He is the Commissioner's designee for recruiting and placement of state monitors. He follows the statute that permits the appointment of monitors and which defines their authority in a district. Forney reports to Dehmer.

The DOE reviews the CAFR's of each district, analyzes them and reviews the qualifying elements for placement of a monitor. The DOE identifies districts that have qualifying elements that could result in the placement of a monitor. If a district just has one or two elements, the solution is remediation or a budget manager. If a district cannot remediate, then a monitor is placed. If it is in a deficit and can pay its bills, it gets help. If a district is in a deficit and cannot pay its bills, then a monitor is placed. A monitor is someone with a fiscal or superintendent's background. The DOE has found that having

a monitor in place generally provides a better rate of success for those districts with issues.

Lakewood has had a monitor since 2014 after a district audit was conducted in 2011. At that time, Lakewood's deficit was approximately \$6.4-6.5 million. Currently, eleven districts have monitors, but not all receive state aid advances. The goal is to help fix the district and then to exit. The monitor remains in place until the situation is remediated which is determined when it has a stable administration, the CAFR findings are cleaned up and the loans (advance state aid) have been paid back. Monitors are paid by the district.

Forney does all the recruiting and day-to-day operations involving the monitors with whom he communicates as often as needed. He oversees them, prepares their contracts, oversees hiring, etc. Lakewood presently has one monitor, but at one point there were three. Monitors have helped. The deficit balance is going down and the number of CAFR findings is getting better. But it will be a long hard road to fix past damage.

The growth in the number of non-public school students far out paces the number of public school students which is not seen in any other district. It is also a by-product of zoning, and the town council appoints the zoning board. The district is responsible for transportation of non-public school students, Child Find and IEP teams. State aid provides Sections 192 and 193 funding and federal aid helps with the IDEA funding.

The financial stressors on the Lakewood public school district are for transportation for non-public school students and special education.

Transportation is mandated for 21,000 non-public school students, and the DOE cannot limit the number. Students in grades K-12 who live beyond a two-mile limit and students in grades 9-12 who live beyond 2.5 miles get bused. The district cannot choose which school the non-public school students attend and must pay mandatory transportation costs. The cost for this runs about \$20-22 million per year.

Lakewood gets transportation aid for mandatory busing; the formula sets the amount. It comes from State appropriations funded by taxpayer revenue.

The cost of special education is another stressor in the district. These students are registered with the public school district and as public school students, they get IEP services. These students are counted in State aid. Extraordinary aid is paid for special education students with out-of-district placements where costs exceed the threshold. The State pot is divided up and Lakewood receives this aid as well.

Lakewood Township has been growing. He reads the CAFR and statistics show its population growth. The district gets it from the DCA. Lakewood Township has new construction; its ratable balance is growing. School taxes go to the township, and first year tax payments stay with the township. The school levy is set by the school board. The township does not have to go above the levy to give money toward education. Ratables are the assessed value of property and are recorded in the county schedule of ratables and in CAFR.

Forney looks for trends and analyses. The tax rates in Lakewood Township have been decreasing; as the ratables go up, the tax rate goes down.

The SFRA determines local fair share by considering town wealth and property values. The DCA provides the data about income, wealth and property value. The district contributes to the local fair share; it is what the township can pay toward school funding. The district is not required to tax up to the local fair share but it can do it. Lakewood is not raising enough for its local fair share. The levy struck by school board is less than total fair share. The tax cap restricts it to 2% and Lakewood capped out at 2%.

Forney looked at Ocean County. Lakewood is in middle of the pack of tax rates. The tax rate is the by-product of tax levy. The tax levy in Lakewood had been stagnant, then it decreased, and it is now increasing. Lakewood Township's population is growing, not stagnating.

In 2015, the levy went up 9.2%. The monitor struck the tax levy that year and they raised taxes to the maximum amount. That tax levy increase in 2015 did not fix the problem because they had a deficit from previous years and costs were rising. The tax levy cap can be overcome to cover increased cost of medical insurance; enrollment; pension and government duties to another entity.

N.J.S.A. 18A:22-40 provides that a district such as Lakewood can raise funds for the general fund deficit and is not limited to the cost of a thorough and efficient education. Other districts have used this statute to raise more revenue. Lakewood Township put out a referendum, but it did not pass. The monitor cannot direct the township to raise taxes.

Voter approval could bring in more funds for the district to cover non-T&E items. Funding comes from the tax levy, federal aid and state aid. State aid comes through the Appropriations Act. Lakewood was frozen in the past and was getting the same amount as prior years. The Appropriations Act did the freezing and it could cause an issue, but school districts can plan for that. The State aid process starts in November and December and is based on what the district is receiving. The governor's budget is prepared in February and March and state aid letters go out March 20 when the budget is due. Once the Appropriations Act is passed, the districts get the aid.

School districts must have a balanced budget; revenue must equal expenses. In some years, Lakewood's budget was balanced with a state aid advance which is a loan. This is all part of the school funding scheme; other statutes permit districts to raise funds. The DOE does not have the funds itself; it must request them from the state treasurer. They want to make sure a district gets the right amount of aid. Forney works with the monitor, county offices, etc., to calculate the true cost for expenses and to compare those costs to the district's costs. Streams of revenue are ascertained and if there is a gap, an advance of state aid is provided. They rely on the school superintendent for educational experience. They look at any costs or efficiencies. The district provides the data and the state looks at aid.

State aid advances are not determined by formula but rather they are given at the discretion of the Commissioner and the Treasurer. The State works with the district to

determine need. The State needs correct numbers before it can determine amount of aid for the district. The funding formula recognizes the number of public school students. State aid advances started in 2015 and filled the gap between spending and what the district had available to spend. Once the state is confident that the amount requested is correct, the Commissioner requests funds from the state Treasurer.

On June 15, 2015, the treasurer approved \$4.5 million requested by Hesper for Lakewood; on June 23, 2016, \$5,640,183 requested by Hesper; on November 9, 2017, requested by Harrington, \$8,522,678. That year they had problems getting data from Lakewood, so the State recreated what the dollar amount would be. On May 7, 2018, Forney advised Winters that Lakewood would receive \$28,182,090 for that fiscal year. But Lakewood had some banked cap rate it could have used to avoid some of these advances. In 2016-17 there was still a shortfall, and the budget was as low as possible. In 2017-18, State aid was \$8.5 million, and the budget was balanced with the loan. The advance State loan was paid on May 17, 2018. Any loan can only be for ten years; he has not seen that loans can be forgiven.

The deficit is the amount that the district is short after it pays its bills, including the loan payback. At the end of the year, the short fall is the deficit. Lakewood's annual deficit is dropping but aid to it is increasing. Some payments have been made to the outstanding balance. Lakewood has a general fund deficit of \$3.8 million down from \$12 million that would free up money in the budget. Lakewood must repay these state advances starting the following year. No interest is paid, and the advance is deducted from aid in future years. Lakewood could ask Lakewood Township for more money.

Reductions in force are something to be avoided. But revenues must equal expenditures. The district could go out in November to ask voters for extra aid; the district could reduce expenditures or raise funds if there is a deficit. He works with Shafter on the budget. Forney was not aware if Azzara said that Lakewood has a revenue problem, not a spending problem. But the budget must be balanced either with advances on state aid, or by reductions ordered by the monitor to get to the balanced budget.

Forney consulted with Shafter about the 2018-19 budget as adequate to meet the district's needs. The tax levy increased. SFRA and State aid were locked in and Lakewood needed another advance. The State must help Lakewood achieve a balanced budget every year.

The monitor can override the board as long as there is a fiscal nexus. If the board does not take action, the monitor can strike the tax levy. Taxes can be raised by the 2% tax cap.

State aid is not provided for non-thorough and efficient education items. In 2016, the state monitor ordered the school board to put to a voter referendum a tax increase for courtesy busing, a non-T&E item; however, the Lakewood Township voters defeated the proposal for payment of courtesy busing by approximately 7,000 to 100.

Seventy-three to eighty percent of the budget is salaries. Forty million dollars is for tuition. Lakewood has significant out-of-district special education costs which put a strain on the budget. Transportation costs are a major contributor to cost increases at \$710 per child. The 2014 monitors noted that the cost for transportation and out-of-district special education expenses were going up and trending higher.

The SFRA was developed for school funding and was approved by the New Jersey Supreme Court. A state monitor is required to get a State aid advance. Lakewood still meets the qualifications for the presence of the monitor due to deficit, internal control issues, federal funds refund, and CAFR findings. The monitor stays in the district at the discretion of the commissioner until the condition has been remediated. Lakewood has \$46 million outstanding.

The annual budget process needs to address economies and efficiencies. Lakewood's CAFR in June showed a \$3.1 million deficit due to operations, \$11 million in total, due to late State benefits as June payments were late. The district is made whole in June or July as State aid is paid out two times per month. The SFRA is not fully funded. The year by year approach is working. The plan with CAFR is to have the monitors fix the district and get out.

FINDINGS²⁹

Much of this case is about numbers and statistics: the SFRA funding formula, Lakewood's revenues and expenditures, demographics, test scores, course offerings, graduation rates, and more. Many of these numbers and statistics are a matter of public record, are not in dispute, and have been explained and contextualized by witness testimony.

For "testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself." In re Estate of Perrone, 5 N.J. 514, 522 (1950). A credibility determination requires an overall assessment of the witness's story "in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952)(citation omitted).

Upon consideration of the public documents, exhibits, and witness testimony relevant to this matter, I **FIND** the following as fact:

In 2000, Lakewood Township had a total population of about 60,000 people. In 2019, the estimated population was roughly 106,000, which represents a seventy-six percent population increase over nearly two decades. This rapid population growth is largely attributed to the burgeoning Orthodox community in Lakewood Township.

A large percentage of Lakewood Township is composed of persons under the age of eighteen, or school-age children. Among the school-age children in Lakewood Township, there is a stark dichotomy between attendance at public schools and

²⁹ The facts have been gleaned from the rather disjointed testimony, the evidence presented by the parties, and certain publicly available information and data from DOE's website. Unfortunately, the parties could not jointly stipulate to facts.

attendance at private or sectarian schools. For the 2008-2009 school year, approximately 4,900 students attended the public schools, while 14,460 attended non-public schools, which meant that about twenty-five percent of the school-age population was then in public school. However, as of 2019, the public school population increased to about 6,000 students, while the private school population had grown to more than 30,000 students.

This means that, currently, only sixteen percent of Lakewood Township's students attend public school while eighty-four percent attend private or sectarian schools. This statistic is so deviant from the average in New Jersey as to be an outlier. The non-public school students in Lakewood Township make up approximately 25% of all non-public school students in New Jersey, and the private school population will continue to outpace the public school population at a geometric rate.

The petitioners' witnesses testified credibly about the effect the rapid growth in private school attendance has had on the district's finances. In particular, Finger, Shafter, and Azzara credibly described Lakewood's on-going budgetary issues arising from the costs borne by the district in accordance with State law for the transportation and special education of students attending private schools.

Finger credibly testified and I accept as fact that when he first left Lakewood's employ in 2010, the district had a budget surplus. Since his return in 2017, the district has needed significant financial help from both the State and the Township to balance its budget. The district's financial issues can be attributed in large part to the extraordinary cost the district bears for its legal mandate to pay for transportation for private school students and for tuition for special education students the district places in out-of-district private schools. For instance, for the 2017-2018 school year, these transportation and special education costs consumed more than half of the district's budget, or \$78M out of a total budget of \$144M. However, in neighboring districts such as Toms River, Brick, Jackson, and Freehold, the average transportation and special education tuition costs make up only 4-7% of their budgets.

Because Lakewood started going into a deficit in 2014, a State monitor was appointed to the district to supervise financial operations and to ensure accountability for

the expenditure of public funds. In 2013-2014, the deficit was approximately \$6 million. For 2016-2017, it was approximately \$4.3 million.

Shafter and Azzara, the State monitors, echoed Finger's sentiments about the correlation between Lakewood's private school expenses and its budget problems. Since their placement in Lakewood in 2014, these monitors have rectified several issues with recordkeeping and financial waste in the district. To avoid teacher layoffs, increased class sizes, and program cuts, and to balance the annual budget, the district has borrowed millions of dollars from the State in the form of advance SFRA aid.

Lakewood received \$4.5M in advance aid in 2015; \$5.6M in 2016; \$8.5M in 2017; and, \$28M in 2018, for a total of nearly \$50M. As noted by several of the witnesses for both parties, advance aid is essentially a loan from the State with money from future SFRA aid. Lakewood must repay these loans out of future aid, creating an unsustainable cycle of borrowing and repayment that will be difficult for Lakewood to break. Only districts with State monitors are eligible for advance aid, and State monitors cannot be removed unless and until a district repays the advance aid it receives.

With Lakewood's budget issues as a backdrop, Winters, Spitz-Stein, and Marshall provided valuable insight into the characteristics of Lakewood's student body, teachers, and programs, and credibly described Lakewood's efforts to deliver T&E to public school students.

The socioeconomic makeup of the district's public school students is 94% Latinx and Black; 100% percent of the student body is eligible for free or reduced-price lunch based on household income. Lakewood also has a high percentage of ESL and LEP students.

The district's course offerings meet the State's requirements for graduation, with twenty English classes, and fifteen classes each in Math, Science, and Social Studies. The district also has AP classes in English and Spanish, and several classes in music, art, and computers. However, over the years the district has cut programs for industrial arts and auto mechanics, and the only foreign language study offered in-district is

Spanish. Also, the district has a special education preschool program for three- and four-year-old students, but only offers general education preschool for four-year-old students.

Winters, Spitz-Stein, and Marshall also credibly discussed relevant characteristics of Lakewood's teachers. Teacher turnover is significant in Lakewood, where the average teacher salary is below the State average. The average teacher in Lakewood has between only four and five years of experience, and Lakewood must spend significant money on teacher development and training. Marshall and Spitz-Stein bemoaned the lack of remediation/intervention specialists in the district who can provide students the extra educational support they require in their areas of struggle or deficiency.

Lakewood lags well behind other districts in terms of per pupil classroom instruction spending and classroom salaries. For example, according to the DOE's Taxpayers' Guide to Spending 2018, Lakewood spent \$7,427 per pupil on classroom instruction for 2016-2017, which ranked as the second lowest amount among the ninety-eight K-12 school districts with more than 3,500 pupils.³⁰ And, for the same school year, Lakewood spent \$6,906 per pupil on classroom salaries, which also ranked as the second lowest among comparably-sized school districts.

Winters and Spitz-Stein also testified about how standardized test scores and other educational benchmarks are improving but are still well below State averages, and their testimony is supported by publicly available information compiled and disseminated by the Department of Education.³¹

For the 2014-2015 school year, only twenty-three percent of high school students met or exceeded expectations on the PARCC assessment for English, placing them in the twenty-third percentile in the State, while only five percent of high school students met or exceeded expectations on the PARCC assessment for Math. On the New Jersey Biology Competency Test (NJBCT), only thirty-two percent of high school students were proficient, while sixty-eight percent were partially proficient.

³⁰ Taxpayers' Guide to Education Spending 2018, available at <https://www.nj.gov/education/guide/2018/>.

³¹ This information is available at [New Jersey School Performance Reports, https://rc.doe.state.nj.us/SearchForSchool.aspx](https://rc.doe.state.nj.us/SearchForSchool.aspx).

On the SAT, only six percent of students scored above the benchmark of 1550, placing Lakewood High School in the thirteenth percentile in the State and well below the Statewide target of forty percent. Moreover, only twelve percent of Lakewood high school students were enrolled in at least one AP/IB course, well below the State average of thirty-six percent. And a mere twelve percent of students scored a three on an AP test or a four on an IB test, while the State average was seventy-two percent.

Finally, for 2014-2015, the graduation rate was seventy-four percent, or the sixth percentile in the State, where the Statewide target was seventy-eight percent; the dropout rate was nearly four percent, or double the Statewide target of two percent; and, only forty-four percent of students were enrolled in either a two- or four-year postsecondary school, compared with seventy-eight percent across the State.

For the 2015-2016 school year, twenty-three percent of high school students met or exceeded expectations on English assessments, or the twenty-third percentile in the State, while seven percent of high school students met or exceeded expectations on Math assessments, or the thirteenth percentile in the State. And on the Biology assessment, only twenty-two percent were proficient, compared with a forty-one percent State average.

On the SAT, twenty-three percent met the College Readiness Benchmarks on the reading and writing portion, compared with seventy-one percent Statewide, and on the math section, eleven percent met the benchmarks, compared with fifty-three percent Statewide. And only fourteen percent of students were enrolled in at least one AB or IB course, compared with thirty-nine percent across the State.

Finally, the graduation rate was seventy-five percent, or the ninth percentile in the State, where the Statewide target was eighty-one percent; the dropout rate was nearly three percent, while the Statewide target was one percent; and, only thirty-seven percent of students were enrolled in either a two- or four-year postsecondary school, compared with seventy-seven percent across the State.

In 2016-2017, only twenty-five percent of students met or exceeded expectations on state English assessments, and only eighteen percent met or exceeded expectations on state Math assessments. Lakewood also suffered from chronic absenteeism, with thirteen percent of students absent for ten percent or more of days enrolled. Finally, for 2016-2017, the four-year graduation was seventy-five percent in Lakewood, while the State average was ninety percent, and the rate of college enrollment (two- and four-year programs) in Lakewood was forty-four percent, while the State average was seventy-six percent.

In 2017-2018, some of the metrics improved slightly: twenty-eight percent of students met or exceeded expectations on state English assessments, and twenty percent met or exceeded expectations on state Math assessments. Chronic absenteeism increased slightly over the previous year, with a rate of sixteen percent. The district's graduation and college enrollment rates still fell below the State average (eighty-two percent versus ninety percent) and (forty-one percent versus seventy-eight percent). Finally, the district's AP and dual enrollment (college courses taken by high school students) rates were also well below State averages (seventeen percent AP enrollment versus a State average of thirty-five percent and zero percent dual enrollment versus a thirteen percent State average).

In 2018-2019, some of the metrics continued to improve, but they still fell well short of State averages. Thirty-three percent of students met or exceeded expectations on state English assessments, and twenty-one percent met or exceeded expectations on state Math assessments. Chronic absenteeism decreased from the previous year, with a rate of nine percent, which was below the State average of eleven percent. The district's graduation and college enrollment rates continued to fall below the State average (eighty-one percent versus ninety percent) and (forty percent versus seventy-eight percent). Finally, the district's AP and dual enrollment rates were also well below State averages (twenty-one percent AP enrollment versus a State average of thirty-five percent and zero percent dual enrollment versus a nineteen percent State average).³²

³² The DOE website provides a statistical analysis of all school districts in the state if comparison is necessary.

Another measure of whether a school district is providing its students with T&E, the NJQSAC, also provides evidence of the education situation in Lakewood. The NJQSAC measures a district's effectiveness in five performance areas, including instruction and program, fiscal management, governance, operations, and personnel, with a score of less than eighty-percent in any category necessitating improvement activities.³³ For example, for the 2016-2017 school year, Lakewood scored at fifty-four percent in instruction and program, which measures such things as student performance and progress on state assessments, graduation rates, and alignment of curriculum to state standards.

Several witnesses discussed the SFRA in general and as applied to Lakewood. The SFRA formula bases the calculation for state aid on the number of students in the public school system and not the total number of students or school-age children residing within the district. The core of the SFRA is the adequacy budget, which is a State calculation of the amount of money a district needs to provide its students with T&E.

A school district contributes to school funding through the local fair share, which is determined by equalizing property value and income in a district and calculating the dollar amount each district can pay to support the local schools. The State component is the equalization aid, which is the State's contribution to school funding.

The funding formula includes transportation aid and special education aid. The transportation and special education aid that Lakewood receives under the SFRA does not cover its actual transportation and special education costs. Dr. Farrie credibly noted that Lakewood spent about \$40 million more than a district its size should spend due to special education and transportation costs.

The following table provides the relevant SFRA numbers for Lakewood for school years 2014-2015 through 2018-2019, rounded to the nearest million:

³³ See NJQSAC User Manual, available at <https://www.nj.gov/education/qsac/manual/>.

Year	Adequacy Budget	Local Fair Share	General Fund School Levy	Equalization Aid	Transpo. Aid	Spec. Ed. Categorical Aid
2014-2015	\$109	\$85	\$85	\$13 (fully funded); \$15 (actually appropriated)	\$9 (fully funded); \$4 (actually appropriated)	\$4 (fully funded); \$3 (actually appropriated)
2015-2016	\$119	\$97	\$90	\$12 (fully funded); \$15 (actually appropriated)	\$10 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2016-2017	\$119	\$93	\$94	\$10 (fully funded); \$15 (actually appropriated)	\$12 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2017-2018	\$110	\$102	\$97	\$8 (fully funded); \$15 (actually appropriated)	\$13 (fully funded); \$4 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)
2018-2019	\$114	\$112	\$101	\$2 (fully funded); \$15 (actually appropriated)	\$13 (fully funded); \$3 (actually appropriated)	\$5 (fully funded); \$3 (actually appropriated)

The Department of Education provided the following chart of Lakewood’s tax levy and local fair share history under the SFRA:

Fiscal Year	Previous Year Tax Levy	Local Fair Share	Difference	Levy as % of Local Fair Share
2011	\$71,593,625	\$64,019,995	\$7,573,630	112%
2012	\$71,593,625	\$64,019,995	\$7,573,630	112%
2013	\$70,238,004	\$65,400,388	\$4,837,616	107%
2014	\$70,630,210	\$71,198,357	-\$568,147	99%
2015	\$77,097,641	\$85,419,632	-\$8,321,991	90%
2016	\$84,693,837	\$96,735,200	-\$12,041,363	88%
2017	\$90,350,168	\$92,974,112	-2,623,944	97%
2018	\$94,088,028	\$102,034,106	-\$7,946,078	92%

Dehmer credibly noted that Lakewood’s tax levy history showed it was consistent, but only started to increase in 2015. In the early years of the SFRA, Lakewood was taxing a little above fair share, but from 2014 to 2018 it was below local fair share. Lakewood’s school tax rate for K–12 districts with 5,700 to 6,300 students compared to the statewide average showed that Lakewood was below the state average. In 2016, Lakewood put to a public vote a referendum to increase the school tax levy to raise more than \$6M to help pay for transportation costs; that measure was defeated by Lakewood Township voters by a margin of 99% to 1%.³⁴

As is clear from the record and testimony, the two major budgetary stressors for the Lakewood district are the cost of transportation and special education placements for children who attend private school.

The following table shows Lakewood’s special education tuition expenditures for private school tuition for school years 2014-2015 through 2018-2019:

School Year	Number of Students	In State	Out of State	Total Tuition
2014-2015	207	21,056,687	65,240	21,122,137
2015-2016	260	25,083,549	125,476	25,209,025
2016-2017	299	27,891,730	281,215	28,172,945
2017-2018	296	29,305,180	593,975	29,899,155
2018-2019	343	33,232,478	72,900	33,305,378

Dr. Farrie credibly testified that the reasons for Lakewood’s high special education costs are a large population of special education students, a large number of students whose disabilities carry high costs, and higher-than-average out-of-district placements, which are more expensive. She posited that fewer out-of-district special education placements could help reduce Lakewood’s special education costs.

The following is a table of the district’s transportation expenditures:

³⁴ Clearly the local voting populace has not demonstrated enthusiasm for an increased tax levy.

School Year	Public School Students	Private School Students	Aid in Lieu of Transp.	Total Transported(Non Spec Ed)	Total Cost
2014-2015	2,052	13,832	462	16,346	\$23,235,597
2015-2016	2,038	15,982	286	18,316	\$26,343,391
2016-2017	2,163	15,919	1,050	19,132	\$25,732,995
2017-2018	2,336	8	19,166	21,510	\$29,739,226
2018-2019	2,285	84	20,147	22,516	\$31,155,570

Although Lakewood has stopped directly paying for courtesy busing of children who live close enough to school such that they do not qualify for publicly-funded transportation, Lakewood’s transportation costs continue to rise. Testimony indicated the need for more sidewalks, crossovers of Route 9, and crossing guards to reduce the number of hazardous walking routes in Lakewood.

In or about 2009, the Department of Education issued a “Lakewood Needs Assessment” in response to a State Board of Education directive arising from litigation first brought in the late 1990s by several then-rural and property-poor school districts, known as the Bacon districts and including Lakewood. See Bacon v. Dep’t of Educ., 398 N.J. Super. 600 (App.Div.2008). In that case, the State Board ruled that several of the Bacon districts (not including Lakewood) were unable to provide T&E under the statutory funding scheme in place at the time. Bacon v. Dep’t of Educ., 2006 N.J. AGEN LEXIS 108 (Jan. 4, 2006). However, due to a jurisdictional lack of “authority to direct that additional resources be provided to any school district in New Jersey,” but acknowledging the need for some remedy, the State Board directed the Commissioner of Education to conduct a “needs assessment” for all of the Bacon districts, including Lakewood. Id. at *96.

The purpose of the needs assessments was to “assess[] the adequacy of the educational inputs and programming currently being provided” and to “identify the unique educational needs of the students in those districts requiring additional programs to address them.” Id. at *103. According to the State Board, “an assessment of the educational needs and the identification of approaches that will successfully address those needs is a prerequisite to ensuring that adequate resources, including fiscal

resources, are provided and appropriate accountability for their use is guaranteed.” Id. at **97-98.

In the Lakewood Needs Assessment, the Department made several observations, conclusions, and recommendations. The Department noted a large percentage of Lakewood Township’s public school students were “at-risk (defined as being at or below 185% of the federal poverty guidelines),” and that “[a]lthough public school enrollment is stable, the nonpublic population increases by close to 1,000 students each year.”³⁵ The Department remarked that a large part of Lakewood’s budget was directed toward transportation and special education costs associated with private school students.

On the issue of transportation costs, the Department stated that “[t]he district is aware that the high cost of transportation, due to increased numbers of nonpublic students, staggered start times and its courtesy busing policy [under which the district opted to spend during the 2008-2009 school year \$4M on busing private school students who did not live remote from their schools], is a significant financial drain.” As for special education costs, the Department found that “[a]nother large budget expenditure is for out-of-district special education placements, which includes transportation for those students.”

The Department concluded that Lakewood, “while facing significant challenges, 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.” The Department recommended that Lakewood reconsider its courtesy busing policy and “continue to develop strategies to educate more of its special education students in-district.” The Department acknowledged that “[t]here are many areas which Lakewood needs to improve in terms of student performance,” including proficiency on English assessments, but stated that “the district also has significant resources to address those needs.” The Department recommended that one “successful strategy for improving student performance is to provide a high-quality preschool program as required by the SFRA.”

³⁵ An underestimate of the increase in non-public school students to be sure.

Lakewood was also the subject of a State audit that revealed issues with the district's spending on transportation and special education. As Soleau credibly testified at hearing, in 2014, the Office of the State Auditor issued a report on its audit of Lakewood for the period of July 1, 2011, to December 31, 2013. The purpose of the audit was "to determine whether financial transactions were related to the school district's programs, were reasonable, and were recorded properly in the accounting systems." The auditors found that "financial transactions . . . were not always reasonable or properly recorded in the accounting system" and that the district had a projected budget deficit of \$5M for FY 2014, and that "[i]ncreases in student transportation costs for public and nonpublic school students and special education tuition account for \$2.6 million of this projected deficit."

On transportation costs, the auditors noted that "[b]ecause of significant student population growth within the municipality, transportation costs had increased to \$19.6 million for the 2012-2013 school year," which included the cost of "provid[ing] non-mandated (courtesy) busing to public and nonpublic school students who would otherwise walk along the numerous hazardous routes identified in the township." The auditors suggested that "transportation costs of the district could be reduced with the implementation of certain initiatives," including the following:

- The majority of the nonpublic school bus routes in the district are segregated by gender. Since most of these schools have a 9:00 a.m. start time, the demand causes increased pricing by the vendors. Separately tiering the bell times for the girls and boys' nonpublic schools could save the district up to \$6.7 million. For example, starting school at 8:30 a.m. for girls and 9:15 a.m. for boys would enable the busing contractors to bid on tiered routes which would reduce the overall number of buses needed and create more competitive route pricing.
- Currently, there are separate buses for each nonpublic school. Savings of approximately \$750,000 could be achieved if routes were developed by school locations, not specific schools. This would result in shorter bus routes and fewer buses.

- Currently, nonpublic schools could have two starting times and as many as five ending times which creates inefficiencies and the need for one-way routes. Providing transportation to nonpublic schools based on a single opening and closing bell schedule for each school building could save the district up to \$1.2 million. This initiative has been presented to the board's transportation committee.
- [And] tiering the bus routes could reduce the savings of other proposed initiatives.

And in terms of special education costs, the auditors found a lack of "proper approval, tuition documentation, and attendance records . . . for students placed in unapproved nonpublic schools."

The auditors recommended that "the district, in coordination with state and local officials, develop long-term goals that will address the costs associated with the rapid growth in the district."

In response to the auditors' findings regarding special education costs, Lakewood indicated that "no additional students will be placed in private programs without the approval of the Commissioner of Education," and in reply to the findings on transportation costs, Lakewood stated that the district was "piloting a staggered nonpublic school schedule for 7 of the largest nonpublic schools during the 2014-2015 school year based on the premise that all nonpublic schools will go to a staggered school schedule in the 2015-2016 school year, which is expected to greatly reduce transportation costs." Yet special education and transportation costs have continued to increase.

In sum, based on the foregoing testimony, exhibits, and publicly available information and data, I **FIND** that Lakewood Township has experienced a population boom that has had a profound impact on the municipality's private and public schools. The overall population growth in Lakewood Township over the past twenty years has been accompanied by an almost proportional rise in attendance at the municipality's private schools. Many of the private school students, who now number more than 30,000, are, by law, entitled to transportation to and from school at public expense. In addition to the significant transportation costs associated with private school students, the Lakewood

Public School District also spends tens of millions of dollars in tuition each year to send a few hundred special education students to private schools. SFRA aid covers only a portion of these costs.

The school district's transportation and special education costs have strained its annual budgets and have led the school district down an unsustainable path of borrowing millions upon millions of dollars in the form of advance SFRA aid. The school district's financial difficulties have negatively affected its public school students, teachers, and programs. This is evident from a narrowed breadth of course offerings, relatively low per pupil classroom instruction spending and classroom teachers' salaries, and marked teacher turnover.

The 6,000+ public school students, nearly all of whom are Latinx and come from low-income homes where English is not the primary language, have fared poorly in terms of performance on English and Math assessments, graduation and dropout rates, and college enrollment.

In the past decade or so, the school district has been given recommendations by both the DOE and the State auditor for reigning in transportation and special education costs, and the Commissioner of Education has appointed a State monitor to oversee the school district's financial operations and to operate with a balanced budget. The continuation of State aid advances as an unreliable source of funding, and the obligation to reimburse the State over time, have contributed to the situation, as the school district's financial problems persist, and unrestrained growth continues in the Township.

LEGAL DISCUSSION

The petitioners make the following arguments:

Point I.

The SFRA is unconstitutional as applied to LPSD [Lakewood Public School District] because it does not assure sufficient funds for the district's public school students to achieve a constitutionally required T&E.

- A. LPSD's unique demographics make the SFRA formula an inapt and insufficient mechanism for assuring that LPSD has adequate funding for its public school students.
- B. Neither the SFRA funding formula nor the adequacy budget related to the SFRA formula contemplate a demographic situation such as Lakewood's and make adequate provision for LPSD's unique demographics.

Point II.

The addition of periodic uncertain, unpredictable and discretionary funding, whether in the form of so-called state advance aid, which is effectively a state loan to LPSD, or of a year-end addition to the state budget by a legislative footnote, cannot cure SFRA's constitutional defect inconsistent with a thorough and efficient system of public schools.

- A. To meet constitutional T&E requirements, funding must be formulaic, certain and not discretionary, predictable and transparent to adequately enable a school district to provide its public school students with T&E.
 - i) Funding must be pursuant to a discernable plan that correlated funding to T&E
 - ii) Funding must be guaranteed and not discretionary
 - iii) Funding must be predictable in order for a district to plan ahead and for the district to know how much it should spend on T&E
 - iv) Funding must be transparent so that the public and Legislature understand the needs of the district.
- B. To meet constitutional T&E requirements, funding must be adequate to enable LPSD to provide its public school students, many of them requiring

additional funding to address their at-risk status, with a meaningful opportunity to meet the NJ Student Learning Standards.

- i) The uncertain discretionary funding of LPSD is inadequate to serve the educational needs of Lakewood's disadvantaged students.
- ii) LPSD student outcomes fall far short of NJSL standards.

C. The statute under which advance state aid is provided was not intended to apply to a situation such as LPSD's annually recurring fiscal shortfall.

- i) The statutory advanced State aid provision and its substance suggest that advance State aid was an adjunct to the State monitors' role and a means to deal with short-term emergent circumstances brought on by fiscal mismanagement, not a mechanism for curing long-term structural problems with the SFRA funding formula.
- ii) The Commissioner's annual certification pursuant to the statute does prove, however, that LPSD's regular SFRA funding is insufficient to provide its students with a T&E education.

D. Because advance state aid is a loan that must be repaid out of future state aid, it exacerbates LPSD's fiscal situation and burdens it with increasingly great obligations.

- i) The Supreme Court of a sister state found that the state's use of loans to meet a district's ordinary operating expenses violated the though and efficient clause of its constitution.
- ii) This problem is compounded by the fact that, after 2018-2019, LPSD will receive as state aid only transportation and

categorical aids and not equalization aid, thus resulting in total state aid at best holding constant in future years, if not decreasing, and making repayment of LPSD's burgeoning debt to the state increasingly difficult.

- iii) Advance state aid for ordinary expenses violates the efficiency standard of T&E.
- iv) Advance state aid is available only to districts with state monitors in place.

Point III.

The presence in LPSD of as many as three monitors continuously since 2014 assures that the district is spending available funds appropriately.

Point IV.

Even if, arguendo, advance state aid and other forms of uncertain discretionary funding could be deemed to satisfy part of the state's obligation to assure that T&E is adequately funded, the facts in evidence demonstrate that LPSD still lacks adequate funding.

- A. Funding is inadequate to prepare students for their roles as citizen and competitors in the labor market.
- B. Funding is inadequate to serve the special educational needs of Lakewood students.

The respondents make the following arguments:

Point I.

The SFRA has been found to be constitutional.

Point II.

Petitioners have not shown that Lakewood is failing to provide them with a thorough and efficient education.

Point III.

The financial condition in Lakewood is the result of factors outside of the SFRA

- A. The district has a history of mismanaging funds and has made choices against the interest of the public school students.
- B. Local choices in the municipality contribute to the current financial conditions in Lakewood.
- C. There is legislation outside of the confines of the SFRA that has affected the district.

Participant Trachtenberg argues:

Point I.

The SFRA of 2008 fails to provide the Lakewood School District with adequate funds to enable it to provide its approximately 6,000 public school students, most of them low-income Latino and Black, with the constitutionally required thorough and efficient education.

Point II.

Assuming it does not, then a constitutionally acceptable way in which the State can provide the LSD with sufficient supplemental non-SFRA funding must be determined.

Point III.

The state's arguments fail because that ignore or obfuscate the State's singular constitutional responsibility for assuring all state students, especially those who are at risk, receive a thorough and efficient education.

Participant Lakewood Township Board of Education argues:

Point I.

The Lakewood Township Board of Education public school district is not adequately funded, and the current state funding formula does not allow the Lakewood Township Board of Education to provide a thorough and efficient education to its public school students. A permanent statutory remedy is required.

Under the New Jersey Constitution, “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” N.J. Const. art. VIII, § 4, ¶ 1. Historically, the Legislature has sought to satisfy this constitutional mandate by passing various school funding statutes and by delegating certain powers and duties to the State Department of Education, the Commissioner of Education, the State Board of Education, and local school boards. Robinson v. Cahill, 69 N.J. 449, 458, 461 (1976); Bd. of Educ. v. City Council of Elizabeth, 55 N.J. 501, 505-6 (1970); Bd. of Educ. of Twp. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94 (1966).

Over the years, the Supreme Court has assessed the constitutionality of those legislative efforts through a series of opinions and orders known as the Abbott v. Burke litigation. The overarching theme of those judicial decisions is that “more severely disadvantaged pupils require more resources for their education” and that the legislative and executive branches must devise “a funding formula that . . . provide[s] all children, including disadvantaged children in poorer urban districts [commonly referred to as Abbott districts], with an equal educational opportunity as measured by the Constitution’s thorough and efficient clause” and “a set of educational program standards.” Abbott v. Burke, 199 N.J. 140, 144 (2009) (Abbott XX) (citing Abbott v. Burke, 119 N.J. 287, 374, 384-86 (1990) (Abbott II)); Abbott v. Burke, 136 N.J. 444 (1994) (Abbott III). According to the Court, “[a]t its core, a constitutionally adequate education [is] an education that will

prepare public school children for a meaningful role in society, one that will enable them to compete effectively in the economy and to contribute and to participate as citizens and members of their communities.” Abbott v. Burke, 149 N.J. 145, 166 (1997) (Abbott IV).

The State’s current funding framework to provide New Jersey’s public school children with a thorough and efficient education (T&E) is the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -70, which was originally enacted in 2008, P.L. 2007, c. 260 (eff. January 13, 2008), and most recently amended in 2018, P.L. 2018, c. 67 (eff. July 24, 2018). In the SFRA, the Legislature made several pronouncements about every public school pupil’s right to a constitutional education and the means by which that right may be realized. N.J.S.A. 18A:7F-44.

The SFRA recognized that “[t]he State, in addition to any constitutional mandates, has a moral obligation to ensure that New Jersey’s children, wherever they reside, are provided the skills and knowledge necessary to succeed” and that “[a]ny school funding formula should provide the resources in a manner that optimizes the likelihood that children will receive an education that will make them productive members of society.” N.J.S.A. 18A:7F-44(b). The SFRA also acknowledged that “[a]lthough the Supreme Court of New Jersey has held that prior school funding statutes did not establish a system of public education that was thorough and efficient” for Abbott districts, “the Court has consistently held that the Legislature has the responsibility to substantively define what constitutes a thorough and efficient system of education responsive to that constitutional requirement.” N.J.S.A. 18A:7F-44(c).

The SFRA defines its funding formula as “an equitable and predictable way to distribute State aid that addresses the deficiencies found in past formulas as identified by the Supreme Court” by “accounting for the individual characteristics of school districts and the realities of their surroundings, including the need for additional resources to address the increased disadvantages created by high concentrations of children at-risk” and “provid[ing] adequate funding that is realistically geared to the core curriculum content standards (CCCS), thus linking those standards to the actual funding needed to deliver that content.” N.J.S.A. 18A:7F-44(h) and (i).

The SFRA declared that “[e]very child in New Jersey must have an opportunity for an education based on academic standards that satisfy constitutional requirements regardless of where the child resides, and public funds allocated to this purpose must be expended to support schools that are thorough and efficient in delivering those educational standards.” N.J.S.A. 18A:7F-44(d). Thus, “school districts must be assured the financial support necessary to provide those constitutionally compelled educational standards” and “[a]ny school funding formula should provide State aid for every school district based on the characteristics of the student population and up-to-date measures of the individual district’s ability to pay.” Ibid.

The SFRA included a “formula an expanded high-quality preschool program for all children who qualify for free and reduced price meals in all districts” because “[i]t is appropriate for the formula to acknowledge that at-risk children do not always receive the same educational exposure at an early age as their peers and to provide the additional resources necessary through high-quality preschool to prepare every child to learn and succeed.” N.J.S.A. 18A:7F-44(k).

The SFRA directed the State Board of Education to “review and update the core curriculum content standards every five years . . . to ensure that all children are provided the educational opportunity needed to equip them for the role of citizen and labor market competitor,” and stressed that the SFRA needed to “work in conjunction with the key school accountability measures that have been enacted in recent years to promote greater oversight, transparency, and efficiency in the delivery of educational services,” including the New Jersey Quality Single Accountability Continuum, N.J.S.A. 18A:7A-10, and the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 to -60. N.J.S.A. 18A:7F-46; N.J.S.A. 18A:7F-44(o).

In Abbott XX, 199 N.J. 140, the Supreme Court held that, through the SFRA, “[t]he legislative and executive branches have enacted a funding formula that is designed to achieve [T&E] for every child, regardless of where he or she lives” because the “SFRA is designed to provide school districts in this state, including the Abbott school districts, with adequate resources to provide the necessary educational programs consistent with state standards.” Id. at 175, 147. In other words, the Court determined that “[t]he State [had]

constructed a fair and equitable means designed to fund the costs of [T&E], measured against delivery of the CCCS.”³⁶ Id. at 172.

In that case, the Court analyzed the various parts of the funding formula. As the Court explained, the “SFRA allocates state resources to school districts, while also requiring certain levels of funding at the local level” through a “weighted school funding formula.” Id. at 152. The formula starts with a “base per pupil amount,” which is “the cost per elementary pupil of delivering the core curriculum content standards and extracurricular and cocurricular activities necessary for [T&E].” Ibid; N.J.S.A. 18A:7F-45. The formula then accounts for increased education costs associated with higher grade levels, and impoverished, limited-English proficient, and special education students. Abbott, 199 N.J. at 152.

The SFRA funding formula includes an Adequacy Budget, which “is based on the community’s wealth and ability to provide funding through local resources;” equalization aid, which “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,” and, categorical aid, which covers certain special education costs. Id. at 153-155.

The Court explained that “[a] district’s LFS is the amount it is required to contribute in support of the Adequacy Budget” through taxes and “is determined by adding a district’s equalized property wealth and its equalized income wealth.” Id. at 155. A district is generally limited in its ability to raise taxes from year to year, N.J.S.A. 18A:7F-38, but “[a] school district may submit to the voters at the annual school election, or on such other date as is set by regulation of the commissioner, a proposal or proposals to increase the adjusted tax levy by more than the allowable amount,” N.J.S.A. 18A:7F-39(c).

And with respect to special education costs, “one-third of special education is funded on the basis of Categorical Aid, ‘regardless of the community’s wealth,’ while the other two-thirds of the special education funding is wealth equalized.” Id. at 156. In addition, the SFRA provides Extraordinary Aid by which “[t]he State reimburses ninety

³⁶ In a prior Abbott decision, the Court held that the CCCS were “a reasonable legislative definition of a constitutional thorough and efficient education.” Abbott v. Burke, 149 N.J. 145, 168 (1997) (Abbott IV).

percent of the costs over \$40,000” for in-district special education programs, while “the State reimburses the districts seventy-five percent of the costs exceeding \$55,000” for private, out-of-district special education placements. Id. at 157.

The SFRA also includes Transportation Aid for a district’s busing costs associated with public and nonpublic school children entitled to transportation services in accordance with N.J.S.A. 18A:39-1 (providing transportation for children who live remote from school) and N.J.S.A. 18A:46-23 (providing transportation for special education students). N.J.S.A. 18A:7F-57.

In sum, the Court has described the SFRA as “a weighted formula, of many parts and layers” that “was carefully constructed to account for the myriad needs and cost considerations relevant when devising a permanent formula to perennially provide school districts with predictable amounts of sufficient resources that should permit the provision of educational services sufficient to enable pupils of all types everywhere to master the CCCS.” Abbott XXI, 206 N.J. 332, 351-52. However, the Court has cautioned that the “SFRA will remain constitutional only if the State is firmly committed to ensuring that the formula provides those resources necessary for the delivery of State education standards across the State.” Abbott XX, 199 N.J. at 170.

The State standards by which T&E is measured are now known as the New Jersey Student Learning Standards (NJSLS), which are designed to prepare students for college, career, and life. N.J.S.A. 18A:7F-46; N.J.A.C. 6A:8-1.1 to -5.3. The NJSLS specify expectations in nine academic areas (English; math; arts; health and PE; science; world languages; technology; 21st century life and careers). N.J.A.C. 6A:8-1.1. School districts are required to “align their curriculum and instructional methodologies to assist all students in achieving the NJSLS and to prepare all students for college and career” and “[p]rogress toward meeting the NJSLS [is] measured by the Statewide assessment system at grades three through 12[.]” N.J.A.C. 6A:8-1.2(c) and (d).

The state regulations governing the NJSLS set forth requirements that districts must meet in terms of curriculum and instruction, the statewide assessment system, and graduation. N.J.A.C. 6A:8-3.1 to -5.3. First, school districts must “ensure that curriculum

and instruction are designed and delivered in such a way that all students are able to demonstrate the knowledge and skills specified by the NJSLS and shall ensure that appropriate instructional adaptations are designed and delivered for students with disabilities, for ELLs [English Language Learners], for students enrolled in alternative education programs, and for students who are gifted and talented.” N.J.A.C. 6A:8-3.1(a).

Second, school districts “shall, according to a schedule prescribed by the Commissioner, administer the applicable Statewide assessments, including the following major components: the elementary assessment component for grades three through five; the middle school assessment component for grades six through eight, [and] the high school end-of-course PARCC assessments.” N.J.A.C. 6A:8-4.1(c). These assessments test a student’s achievement or proficiency in the areas of English, math, and/or science. Ibid.

The Department of Education “shall review the performance of schools and school districts by using a percent of students performing at the proficient level as one measure of AMO [annual measurable objectives] and incorporating a progress criterion indicative of systemic reform,” N.J.A.C. 6A:8-4.4, and school districts “shall provide appropriate instruction to improve skills and knowledge for students performing below the established levels of student proficiency in any content area either on the Statewide or local assessments,” N.J.A.C. 6A:8-4.3(c).

Finally, “[f]or a State-endorsed diploma, district boards of education shall develop, adopt, and implement local graduation requirements that prepare students for success in post-secondary degree programs, careers, and civic life in the 21st century[.]” N.J.A.C. 6A:8-5.1(a).

The Department of Education also has “rules to implement the New Jersey Quality Single Accountability Continuum (NJQSAC) system, as required by N.J.S.A. 18A:7A-3 et seq., for evaluating and monitoring all school districts in the State.” N.J.A.C. 6A:30-1.1. Through NJQSAC, “school districts are evaluated in five key component areas of school district effectiveness -- instruction and program, personnel, fiscal management, operations, and governance -- to determine the extent to which school districts are

providing [T&E].” Ibid. Further, “[t]he standards and criteria by which school districts are evaluated will assess actual achievement, progress toward proficiency, local capacity to operate without State intervention, and the need for State support and assistance.” Ibid.

If a school district “satisfies at least 80 percent of the weighted quality performance indicators in each of the five key components of school district effectiveness,” the Commissioner shall designate the district as ‘high performing’ and the State Board, upon the Commissioner’s recommendation, may “certify, for a period of three years, the school district as providing a thorough and efficient education.” N.J.A.C. 6A:30-4.1. However, “[s]chool districts that satisfy less than 80 percent of the weighted quality performance indicators in one or more of the key components of school district effectiveness shall commence improvement activities[.]” N.J.A.C. 6A:30-5.2.

Another important component of the state education system’s T&E mandate are regulatory and statutory fiscal accountability, efficiency, and budgeting procedures for school districts. First, state rules “assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and [...] ensure [that] each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution’s mandate for a thorough and efficient system of free public schools for all children” and “ensure the efficient expenditure of budgeted funds in a manner consistent with a school district’s approved annual budget.” N.J.A.C. 6A:23-1.1.

In addition, and particularly relevant to this matter, is the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 to-59. Under that act, “the Commissioner of Education shall have the authority to appoint a State monitor and additional staff, as necessary, to provide direct oversight of a board of education’s business operations and personnel matters if: the school district receives an adverse or a disclaimer of opinion by its independent auditor in the annual audit required pursuant to N.J.S.18A:23-1” or other fiscal circumstances. N.J.S.A. 18A:7A-55(a). Once appointed, “[t]he State monitor shall provide oversight in the school district until the commissioner determines that all remedial actions required under the plan have been implemented and the necessary local capacity

and fiscal controls have been restored to school district operations.” N.J.S.A. 18A:7A-55(e).

Finally, the Act makes possible the receipt of financial loans for school districts with a State fiscal monitor. Specifically, “[t]he Commissioner of Education shall recommend to the State Treasurer whether an advance State aid payment should be made to a school district for which a State monitor has been appointed.” N.J.S.A. 18A:7A-56(a). The act states that “[t]he commissioner’s recommendation shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education.” Ibid.

If a school district receives such aid, “[t]he advance State aid payment shall be repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years” and “[t]he term of the repayment shall not exceed 10 years, but may be for a shorter term as determined by the State Treasurer.” N.J.S.A. 18A:7A-56(b).

While the Court has a lengthy history of assessing the constitutionality of various school funding statutes as applied to poor, urban school districts, the Court has yet to address whether a particular school funding statute, as applied to other school districts, has failed to provide T&E. Specifically, as the Court has noted: “[w]hile substandard educational conditions – perhaps of constitutional dimension – may exist in districts other than those that have been designated as Abbott districts, this Court has never stipulated any remedy, nor even found a constitutional violation, for children in non-Abbott districts.”³⁷ Abbott v. Burke, 206 N.J. 332, 371 (2011) (Abbott XXI).

This is precisely the issue raised by petitioners in this matter. They allege that the SFRA’s funding formula is unconstitutional as applied to Lakewood, a non-Abbott district, such that Lakewood does not receive sufficient funding under the SFRA to provide its public school students with T&E because the SFRA does not take into account the

³⁷ Abbott districts are now referred to as “SDA districts.”

extraordinary costs that Lakewood incurs to provide transportation and special education services to a large number of students attending private schools in the district.

The Court has instructed that “[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, 69 N.J. at 455). The Court has also cautioned that “[i]t is well recognized that legislative enactments enjoy a presumption of validity,” and that “[w]henever a challenge is raised to the constitutionality of a statute, there is a strong presumption that the statute is constitutional.” Ibid (citations omitted).

To prevail in this case, petitioners have the burden of showing that (1) Lakewood’s public school children are not receiving T&E and (2) the reason for the deprivation of their constitutional right to T&E is the SFRA. Specifically, whether the SFRA is unconstitutional as applied to Lakewood “turn[s] on proof that plaintiffs 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). As part of their proofs, petitioners must show that Lakewood “has done all it can do with statutorily available resources and improvement mechanisms, yet still cannot provide T&E because the statutory funding scheme generates insufficient monies for this purpose.” Bacon v. Dep’t of Educ., 2003 N.J. AGEN LEXIS 1195, *15 (Comm’r, Feb. 10, 2003).

Importantly, “the Court has repeatedly acknowledged and approved the administrative handling of educational controversies that arise in the context of constitutional and statutory litigation” because “ultimate constitutional issues are especially fact-sensitive and relate primarily to areas of educational specialization.” Id. at 300.

As such, this matter, which implicates fact-sensitive constitutional issues in the educational context, is appropriately before the Commissioner of Education, who transmitted the controversy between petitioners and respondents to the OAL for a hearing. The OAL has been tasked with “conduct[ing] a thorough hearing” for the “development of a complete and informed record, which will reflect determinations of

appropriate administrative issues as well as the resolution of factual matters material to the ultimate constitutional issues.” Id. at 303. And “in order to discharge this responsibility in a way that makes sense, the first-instance decision makers, the ALJ and the agency head, must fully address such constitutional issues raised as are necessary to the decision, and resolve them in principled fashion by their best lights, subject, of course, to judicial review. Jones v. Dep’t of Cmnty. Affairs, 395 N.J. Super. 632, 636-37 (App.Div.2007) (citing Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 14-42 (1962)).

I. Is Lakewood delivering T&E to its public school students?

In order to prevail on their claim that the SFRA is unconstitutional as applied to Lakewood because the SFRA provides insufficient funding for Lakewood to provide its students with T&E, petitioners must first show that Lakewood’s public school students are not receiving T&E. For the following reasons, I **CONCLUDE** that petitioners have met their burden of showing that Lakewood’s students are not receiving T&E.

As noted above, the State standards by which T&E is measured are the NJSLs, which are designed to prepare students for college, career, and life. School districts are required to “align their curriculum and instructional methodologies to assist all students in achieving the NJSLs and to prepare all students for college and career” and “[p]rogress toward meeting the NJSLs shall be measured by the Statewide assessment system at grades three through 12[.]” Thus, the NJSLs include requirements for curriculum and instruction, the statewide assessment system, and graduation.

Indeed, the Court has previously pronounced that whether a school district’s children are receiving T&E can be measured by such educational outputs as “their test scores, their dropout rate, [and] their attendance at college[.]” Abbott II, 119 N.J. at 391. Other indicia of T&E include educational inputs such as “teacher-student ratios and the education and experience level of the professional staff, as well as facilities to accommodate appropriate class sizes, science labs, media centers and libraries, and the availability of advanced placement courses and programs for gifted students, art and music programs and quality physical education programs.” Bacon v. Dep’t of Educ., 2006 N.J. AGEN LEXIS 108, *62.

By most of these measures, the education received by Lakewood's students is constitutionally inadequate and they are not being sufficiently prepared for college, career, and life. First, while Lakewood's curriculum aligns with the NJSL requirements for graduation, and the district offers courses in AP English and Spanish, and several classes in music, art, and computers, the district has cut programs for industrial arts and auto mechanics, and the only foreign language study offered in-district is Spanish. Moreover, the district offers general education preschool to four-year-olds, but not three-year-olds.

While these deficiencies alone do not suggest that Lakewood's students are not getting T&E, there are other factors indicative of a lack of T&E. Chief among those proofs are standardized test scores in the district. While there was testimony at hearing of improving test scores, the data show that Lakewood's test scores are woeful when considered in isolation and when compared to other districts.

For the 2014-2015 school year, only twenty-three percent of high school students met or exceeded expectations on the PARCC assessment for English, placing them in the twenty-third percentile in the State, while only five percent of high school students met or exceeded expectations on the PARCC assessment for Math. On the Biology assessment, only thirty-two percent of high school students were proficient, while sixty-eight percent were partially proficient.

On the SAT, only six percent of students scored above the benchmark of 1550, placing Lakewood High School in the thirteenth percentile in the State and well below the Statewide target of forty percent. And a mere twelve percent of students scored a three on an AP test or a four on an IB test, while the State average was seventy-two percent.

For the 2015-2016 school year, twenty-three percent of high school students met or exceeded expectations on English assessments, or the twenty-third percentile in the State, while seven percent of high school students met or exceeded expectations on Math assessments, or the thirteenth percentile in the State. And on the Biology assessment,

only twenty-two percent were proficient, compared with a forty-one percent State average.

On the SAT, twenty-three percent met the College Readiness Benchmarks on the reading and writing portion, compared with seventy-one percent Statewide, and on the math section, eleven percent met the benchmarks, compared with fifty-three percent Statewide.

In 2016-2017, only twenty-five percent of students met or exceeded expectations on state English assessments, and only eighteen percent met or exceeded expectations on state Math assessments. This means that three-quarters or more of Lakewood's students did not meet expectations on English and Math assessments. And in 2017-2018, the scores improved only slightly: twenty-eight percent of students met or exceeded expectations on state English assessments, and twenty percent met or exceeded expectations on state Math assessments. Finally, in 2018-2019, some of the scores continued to improve, but still fell well below State averages. Thirty-three percent of students met or exceeded expectations on state English assessments, and only twenty-one percent met or exceeded expectations on state Math assessments.

Other T&E measurements are equally troubling. The district's chronic absenteeism rates were well above or close to the State average during the 2016-2017, 2017-2018, and 2018-2019 school years. In 2014-2015 and 2015-2016, the district's dropout rates were much higher than the Statewide targets for those years.

Lakewood's graduation rate improved somewhat from close to 75% in 2014-2015, 2015-2016, and 2016-2017 to 82% in 2017-2018 and 81% for 2018-2019, yet still fell well under the State average of about 90%. Lakewood also suffers from a low rate of college enrollment: 44% versus a State average of 78% in 2014-2015; 37% versus a State average of 77% in 2015-2016; 44% against a State average of 76% in 2016-2017; 41% versus 78% in 2017-2018; and, 40% versus 78% in 2018-2019. And the district's students fared no better in terms of AP enrollment, with rates of 17% and 21% in 2017-2018 and 2018-2019, for example, as opposed to State averages of 35% during those same years.

Finally, under another measurement of whether a school district is providing T&E – NJQSAC – for the 2016-2017 school year, Lakewood scored at 54% in the category of instruction and program, which measures such things as student performance and progress on state assessments, graduation rates, and alignment of curriculum to state standards, well below the benchmark of 80%.

Thus, when viewed alone or when compared with other districts, the educational output data show that Lakewood's students are receiving an education that falls short of T&E.

In a district in which 100% of the student body is eligible for free or reduced price lunch based on household income and which has a high percentage of ESL and LEP students, Lakewood undoubtedly faces obstacles in its attempt to deliver T&E to its pupils. However, there is evidence to suggest that Lakewood is not providing certain educational inputs to help the district meet its constitutional obligation to its students.

In terms of teachers, teacher turnover is significant in Lakewood; the average teacher in Lakewood has between only four and five years of experience; Lakewood must spend significant money on teacher development and training. There is also a lack of remediation/intervention specialists in the district to give struggling students extra educational support.

Lakewood also struggles in terms of per pupil classroom instruction spending and classroom salaries. For example, Lakewood spent \$7,427 per pupil on classroom instruction for 2016-2017, which ranked as the second lowest amount among the ninety-eight school K-12 districts with more than 3,500 pupils. And, for the same school year, Lakewood spent \$6,906 per pupil on classroom salaries, which also ranked as the second lowest among comparably-sized school districts.

Finally, Lakewood lacks a comprehensive preschool program that includes general education preschool for three-year-old children, and instead only offers general education preschool for four-year-olds and special education preschool for three- and four-year-olds. However, as the DOE noted in its Lakewood Needs Assessment more than a

decade ago, a “successful strategy for improving student performance is to provide a high-quality preschool program as required by the SFRA.”

Based on the foregoing, I **CONCLUDE** petitioners have shown by a preponderance of the credible evidence that Lakewood’s students are not receiving a thorough and efficient education as required by the New Jersey Constitution. The statistics sadly indicate that Lakewood’s students are not prepared for college, career, or life due to a constitutionally inadequate education. In other words, petitioners have offered sufficient “proof that [Lakewood’s students] suffer educational inequities.”

II. Is the SFRA unconstitutional as applied to Lakewood?

However, to succeed on their claim that the reason Lakewood cannot provide T&E is the SFRA, such that the SFRA is unconstitutional as applied to Lakewood, petitioners must also prove that the educational “inequities derive, in significant part, from the funding provisions” of the SFRA. This is a heavy burden because “it is well recognized that legislative enactments enjoy a presumption of validity” and “[w]henver a challenge is raised to the constitutionality of a statute, there is a strong presumption that the statute is constitutional.” For the reasons that follow, I **CONCLUDE** that petitioners have failed to carry their burden.

Petitioners contend that the SFRA’s funding formula is unconstitutional as applied to Lakewood Township’s 6,000+ public school students, such that Lakewood does not receive sufficient funding under the SFRA to provide its public school students with T&E because the SFRA does not take into account the extraordinary costs that Lakewood incurs to provide transportation and special education services to a large number of nonpublic school students, who total more than 30,000.³⁸

³⁸ N.J.S.A. 18A:39-1 requires Lakewood to provide transportation at public expense for public and nonpublic students who live remote from school; Lakewood is also “responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21,” services which must “[b]e provided at public expense, under public supervision, and with no charge to the parent.” N.J.A.C. 6A:1-1.1; N.J.S.A. 18A:46-1 to -55.

In their second amended petition, petitioners submit that the large sum Lakewood spends on mandatory transportation and special education for private school students “consume[s] about 40% of the [district’s] budget” and means that the money then available for public school students is “substantially less than SFRA’s adequacy budget” for Lakewood. Petitioners allege that “[t]he Commissioner of Education and the State Treasurer have formally recognized [between 2015 and 2018] that SFRA funding is inadequate to provide [Lakewood] public school students with a T&E education by providing, in dramatically increasing amounts, ‘advance state aid’ or ‘emergency loans.’”

However, petitioners maintain that continued receipt of these loans is not only unsustainable, but also unpredictable, and that due to the inexorable rise of nonpublic school students and the associated transportation and special education costs, the district needs sufficient and predictable funding through the SFRA to provide the public school students with T&E. As such, petitioners urge that “the Commissioner recommends that this matter be remedied by the Legislature.”

In response, respondents contend that Lakewood’s financial difficulties are not the result of the SFRA, but instead due to other reasons. These other reasons, according to respondents, include (1) Lakewood’s history of fiscal mismanagement (2) community choices (3) and legislation other than the SFRA.

These reasons proffered by respondents shall be considered in turn and, together with other factors to be discussed, lead to the conclusion that the SFRA is not unconstitutional as applied to Lakewood because the lack of T&E in Lakewood is not due, in significant part, to the SFRA. Put another way, petitioners have failed to prove that, even if Lakewood had taken certain actions within its powers and discretion, the SFRA would still not provide Lakewood with adequate funding to deliver T&E.

Fiscal mismanagement by Lakewood

Respondents persuasively argue that a significant reason for additional unavailable funds for the provision of T&E is choices Lakewood made with respect to the tax levy authorized under the SFRA. Respondents note that, while there is a tax levy cap,

Lakewood chose not to raise the levy to the cap for several years. In particular, “from 2011-2014, as the non-public student population was rapidly increasing in the Township, the District decided to keep the levy stagnant.” And although the state monitor, once installed in 2014, required Lakewood to increase the levy, respondents correctly assert that the decision not to increase the levy during the previous years “means that the District is now not taxing up to its local fair share” 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.” This is additional revenue that could have gone to support Lakewood’s obligation to provide and fund T&E to its public school students.

Community choices

Respondents also point to other reasons for Lakewood’s financial struggles separate and apart from the SFRA funding formula, including “local choices” such as “zoning for private schools; expansive new construction allowing for an influx of new residents; determinations to send children to non-public schools that mandate transportation due to distance; and the community’s determination not to pass referendums for additional funding pursuant to N.J.S.A. 18A:22-40 or a second question [under N.J.S.A. 18A:7F-39].”

While municipal and community decisions regarding zoning, new construction, and selection of private schools may play roles in Lakewood’s extraordinary transportation and special education costs, respondents did not provide expansive evidence on these subjects, and thus no findings of fact were made regarding those issues.

However, both respondents and petitioners did present certain evidence regarding Lakewood’s efforts, or lack thereof, to raise taxes as permitted under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39. Under N.J.S.A. 18A:22-40, a school district may “raise additional sums of money, over and above the amount fixed and determined in the last annual school budget, by special district tax, for general fund expenses,” and under N.J.S.A. 18A:7F-39, a school district “may submit to the voters at the annual school election, or on such other date as is set by regulation of the commissioner, a proposal or

proposals to increase the adjusted tax levy by more than the allowable amount authorized pursuant to [N.J.S.A. 18A:7F-38]" and, if approved by the electorate, may be used to finance non-T&E programs or services.

The only instance in which Lakewood availed itself of its powers and discretion under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 between school years 2014-2015 and 2018-2019 was in 2016, when Lakewood put to a public vote a referendum to increase the school tax levy to raise more than \$6M to help pay for transportation costs. While that measure was defeated by Lakewood Township voters by a margin of 99% to 1%, N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 at least present opportunities for Lakewood to ameliorate its financial difficulties.

Other legislation

In addition to N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39, respondents point out that there is other legislation outside of the SFRA that has affected Lakewood financially. N.J.S.A. 18A:7F-38 places a tax levy cap on school districts by preventing a school district from seeking "an increase in its adjusted tax levy that exceeds . . . tax levy growth limitation calculated as follows: the sum of the prebudget year adjusted tax levy and the adjustment for increases in enrollment multiplied by 2.0 percent, and adjustments for an increase in health care costs, increases in amounts for certain normal and accrued liability pension contributions." That restriction may be overridden through voter approval under N.J.S.A. 18A:7F-39, as discussed above.

And the annual Appropriations Act also affects the amount of money Lakewood receives through the SFRA. Under the Appropriations Clause of the New Jersey Constitution, "[n]o money shall be drawn from the State treasury but for appropriations made by law." N.J. Const. art. VIII, § 2, ¶ 2. Pursuant to this constitutional clause, "the power and authority to appropriate funds is vested in the Legislature," Burgos v. State, 222 N.J. 175, 206 (2015), and "[o]ur Constitution firmly interdicts the expenditure of state monies through separate statutes not otherwise related to or integrated with the general appropriation act governing the state budget for a given fiscal year." City of Camden v. Byrne, 82 N.J. 133, 162 (1980).

Thus, although the Governor makes budget recommendations to the Legislature, and the SFRA requires that, within two days of the Governor's budget message to the Legislature, the Commissioner "shall notify each district of the maximum amount of aid payable to the district in the succeeding school year . . . and shall notify each district of the district's adequacy budget for the succeeding school year," the amount of aid a district actually receives is dictated by the Legislature's annual Appropriations Act. N.J.S.A. 52:27B-20; N.J.S.A. 18A:7F-5(a). As a result, for the 2018-2019 school year, for example, Lakewood would have received roughly \$13M in transportation aid if fully funded, but only received \$3M through the Appropriations Act; and for the same year, Lakewood's special education categorical aid was supposed to be \$5M, but the Legislature instead appropriated \$3M in such aid.

All of the above supports the conclusion that petitioners have not shown that the SFRA is solely or significantly to blame for Lakewood's inability to provide its public school students with T&E. And there are other reasons, separate from the SFRA, that further support this conclusion.

These reasons include a lack of a comprehensive preschool program and Lakewood's transportation and special education spending, issues that were first identified and highlighted more than a decade ago in the Lakewood Needs Assessment issued by DOE. The purpose of the needs assessment was to "assess[] the adequacy of the educational inputs and programming currently being provided" and to "identify the unique educational needs of the students in those districts requiring additional programs to address them" as "a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their use is guaranteed."

Then, as now, a large portion of Lakewood's budget was devoted to transportation and special education costs. On transportation costs, the Department stated in the needs assessment that "[t]he district is aware that the high cost of transportation, due to increased numbers of nonpublic students, staggered start times and its courtesy busing policy [under which the district opted to spend during the 2008-2009 school year \$4M on busing private school students who did not live remote from their schools], is a significant

financial drain.” The Department recommended that Lakewood reconsider its courtesy busing policy to cut its transportation costs.

In the many years since that assessment, not much has changed. To be sure, Lakewood has taken some steps to reduce some of its transportation costs. For instance, the record shows that Lakewood stopped providing courtesy busing at its own expense in 2016, several years after the Department issued the needs assessment. Also, in response to the 2014 State audit recommendations for reducing transportation costs, Lakewood assured that it would be “piloting a staggered nonpublic school schedule for 7 of the largest nonpublic schools during the 2014-2015 school year based on the premise that all nonpublic schools will go to a staggered school schedule in the 2015-2016 school year, which is expected to greatly reduce transportation costs.”³⁹ The Legislature also provided help to the district through the LSTA pilot program, N.J.S.A. 18A:39-1d, through which the Legislature subsidized the busing of remote nonpublic school children in Lakewood for school years 2016-2017, 2017-2018, and 2018-2019.

Despite these measures, Lakewood’s transportation costs have continued to increase annually, from \$23M in 2014-2015 to \$31M in 2018-2019. Yet there is an absence of evidence in the record to indicate that these rising costs are totally attributable to the rising number of nonpublic school students, and that Lakewood 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.

As with its transportation costs, Lakewood’s special education costs have continued to consume a huge portion of the district’s budget in the years since the needs assessment. Then, as now, Lakewood has a “large budget expenditure is for out-of-district special education placements, which includes transportation for those students.” In the needs assessment, the Department urged Lakewood to “continue to develop strategies to educate more of its special education students in-district.” However, the record in this matter is short on evidence of the steps Lakewood has actually taken to save money by educating more of its special education students in a district-run program.

³⁹ It is unclear from the record whether all nonpublic schools actually staggered their schedules for the 2015-2016 school year, or any other school year.

The record shows that in 2018-2019, for example, Lakewood sent 343 special education pupils to private school placements at a total cost of \$33M in tuition. That is an average of nearly \$100,000 in tuition per student. Petitioners presented scant evidence of the district's efforts to educate more of these children in-district, which could save Lakewood substantial sums and result in more aid. Indeed, the SFRA provides Extraordinary Aid by which "[t]he State reimburses ninety percent of the costs over \$40,000" for in-district special education programs, while "the State reimburses the districts seventy-five percent of the costs exceeding \$55,000" for private, out-of-district special education placements. That is a substantial difference.

Petitioners may argue that these 343 students could not possibly be educated in-district due to the nature of their disabilities. Even if true, under the SFRA:

A school district may apply to the commissioner to receive additional special education categorical aid if the district has an unusually high rate of low-incidence disabilities, such as autism, deaf/blindness, severe cognitive impairment, and medically fragile. In applying for the aid the district shall: demonstrate the impact of the unusually high rate of low-incidence disabilities on the school district budget and the extent to which the costs to the district are not sufficiently addressed through special education aid and extraordinary special education aid; and provide details of all special education expenditures, including details on the use of federal funds to support those expenditures.

[N.J.S.A. 18A:7F-55(g).]

Petitioners did not present any evidence that Lakewood was ineligible for or tried to avail itself of this statutory option for additional special education aid.

In their amended petition, petitioners themselves suggested another possible avenue for Lakewood to bolster its in-district program by asking the Commissioner to "fully finance the building of an in-district facility for students with extraordinary special education needs pursuant to N.J.S.A. 18A:7G-5(k)" in order to cut down on special

education costs associated with private placements.⁴⁰ Yet there is no evidence Lakewood has applied to the Commissioner for approval of any such project.

Finally, aside from insufficient evidence of adequate efforts by Lakewood to either raise additional revenue or reduce transportation and special education spending in order to provide T&E to its children, another way in which Lakewood could increase its chances at delivering T&E is through a comprehensive preschool program for at-risk children. As the Department suggested in its Needs Assessment one “successful strategy for improving student performance is to provide a high quality preschool program as required by the SFRA.” Certainly, the Legislature recognized through the SFRA that “at-risk children do not always receive the same educational exposure at an early age as their peers” and sought to provide “additional resources necessary through high-quality preschool to prepare every child to learn and succeed.” Nonetheless, Lakewood’s superintendent testified at hearing that the district offers preschool to three- and four-year-old special education students, but only offers general education preschool to four-year-old, and not three-year-old, children. Petitioners have also not provided any evidence that Lakewood has attempted to or is ineligible for any State financing under N.J.S.A. 18A:7G-5 for a preschool facility to accommodate more at-risk, non-special education children.

In light of all these reasons for Lakewood’s lack of additional revenue or additional savings that could buttress the district’s efforts to deliver T&E, reasons separate from the SFRA funding formula as applied to Lakewood, I **CONCLUDE** that petitioners have failed to carry their heavy burden to show that the SFRA is the substantial or a significant reason Lakewood cannot provide T&E such that the SFRA is unconstitutional as applied to Lakewood.

However, the fact remains that petitioners have shown that, for the years at issue, Lakewood’s children did not receive T&E, and that deprivation cannot go unremedied. For their part, respondents assert that the Commissioner has gone to great lengths to assist Lakewood in its obligation to deliver T&E, including the installation of a State

⁴⁰ This provision allows State financial support for certain school facilities projects.

monitor to help with district finances and through the many millions of dollars in advance State aid that Lakewood received between 2015 and 2018. Nonetheless, these measures have not ensured that Lakewood's students receive T&E. Moreover, Lakewood's continued receipt of advance state aid is unsustainable and only serves to exacerbate Lakewood's financial difficulties by requiring Lakewood to repay these loans with future state aid.

As discussed above, there are many steps Lakewood could potentially take to help itself in its quest to provide T&E: develop a comprehensive preschool program for at-risk children; find ways to cut transportation costs so more money may be devoted to educating public school students; improve and expand the in-district special education program to reduce expensive private school placements. Unfortunately, Lakewood has either been unwilling or unable, on its own, to take all necessary steps to deliver T&E to the public school populace. Lakewood needs more help.

That is why, as in Bacon v. Dep't of Educ., 2006 N.J. AGEN LEXIS 108, in which the State Board of Education recognized that "the mandate of the New Jersey Constitution and [the State Board and Commissioner's] statutory responsibility for the general supervision and control of public education in this state require that we exercise our authority . . . to ensure that the educational deficits shown by the record . . . are addressed" through a needs assessment, I hereby **CONCLUDE** and **RECOMMEND** to the Commissioner that she conduct another needs assessment for Lakewood similar to the one conducted under the auspices of Bacon.

The purpose and goal of a new needs assessment would be the same as the needs assessment conducted over a decade ago: "an assessment of the educational needs and the identification of approaches that will successfully address those needs is a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their use is guaranteed." Through a needs assessment, the Commissioner would be able to deploy from within the Department of Education policy experts in the areas of school transportation, special education, and preschool education who could assist Lakewood in identifying approaches and strategies that need to be implemented to ensure that Lakewood can maximize its resources in order

to deliver the thorough and efficient education to which Lakewood's public school students are constitutional entitled.⁴¹

ORDER

The petitioners' application to declare that Lakewood cannot provide a thorough and efficient education to its public school students is **GRANTED**; the petitioner's application to declare the SFRA unconstitutional as applied to Lakewood is **DENIED**. However, based on the record presented, it is hereby **RECOMMENDED** to the Commissioner that a current Needs Assessment regarding the ability of Lakewood to deliver a thorough and efficient education to its public school students be undertaken with appropriate recommendations to the district.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

⁴¹ The petitioners seek a legislative remedy to be proposed by the Commissioner. The Needs Assessment can assist in that regard.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 1, 2021

DATE



SUSAN M. SCAROLA, ALJ (Ret., on recall)

Date Received at Agency:

March 1, 2021

Date Mailed to Parties:

SMS/CB

APPENDIX

WITNESSES

For petitioner:

Dr. Ross Haber
Laura Winters
Robert Finger
Malka Spitz-Stein
Marcy Marshall
Dr. Danielle Farrie
David Shafter
Michael Azzara
Melvin Wyns

For respondent:

Kevin Dehmer
Christopher Soleau
Catherine Anthony
Raymond J. Zirilli, Jr.
Robert Ortley
Glenn Forney

EXHIBITS

For petitioner:

Exhibit 1 Total Classroom Spending taxpayer guide to educational spending
DOE website
Exhibit 1-1 All districts
Exhibit 2 FY2018 Susan Ecks Low-Income Urban and Neighboring Districts
Exhibit 2-1 FY-15 to FY-17

- Exhibit 2-2 Sources
- Exhibit 2-3 Sources for FY-18
- Exhibit 2-4 Key
- Exhibit 3 SFRA numbers for 2017-2018
- Exhibit 4 Lakewood Budget 2016-2017
- Exhibit 5 Lakewood Budget 2017-2018
- Exhibit 6 Request for Admissions
- Exhibit 6-1 Census Information
- Exhibit 6-2 Compilation of Peer Schools School Report Cards 2013-14
- Exhibit 6-3 HSPA and GEPA Scores
- Exhibit 6-4 District graduation rate and list of peer schools (All Abbott)
- Exhibit 7 Census data
- Exhibit 7-1 Per capita income and rank
- Exhibit 7-2 September 2017 Labor force (Lakewood p. 1276)
- Exhibit 7-3 2016 Labor (Lakewood p. 1269)
- Exhibit 7-4 source census data
- Exhibit 8 Birth Rate Lakewood and Newark
- Exhibit 9 Master Plan Demographic page 3 population 220,000 by 2030
- Exhibit 10 Letter of Township Manager
- Exhibit 10-1 Taxpayer Guide to Educational Spending Low-Income Urban and Neighboring Districts
- Exhibit 10-2 followed by all the districts printed out
- Exhibit 11 Non-T & E expenses Low-Income Urban and Neighboring Districts followed by pages from each districts' budget
- Exhibit 12 Lakewood Graduation Rates followed by DOE table
- Exhibit 13 Lakewood Title I allocation public/nonpublic
- Exhibit 13-1 2017-18 public/nonpublic (significant shift)
- Exhibit 13-2 2016-17 public/nonpublic
- Exhibit 13-3 other years' public/nonpublic
- Exhibit 14 2017-18 Students with disabilities and Low-income public/nonpublic
- Exhibit 14-1 other years Students with disabilities and Low-income public/nonpublic
- Exhibit 15 CD Mike Azzara

- Exhibit 15-1 Certification of Hassenfeld
- Exhibit 16 NJ Monthly Rankings
- Exhibit 17 Underfunding
- Exhibit 17-1 Drain on the Budget
- Exhibit 18 Delete
- Exhibit 19 Lakewood CDP
- Exhibit 20 Haber CV
- Exhibit 21 Haber Report
- Exhibit 22 Robinson report
- Exhibit 23 BA Report
- Exhibit 24 Abbot Designation
- Exhibit 25 CD of FY15 to FY18 Notice to Districts State Aid
- Exhibit 26 Nonpublic Transportation Costs
- Exhibit 27 Superintendent Report
- Exhibit 28 NJISAI Report
- Exhibit 29 State Graduation Rate
- Exhibit 30 State PARCC Scores
- Exhibit 31 1994 Letter Superintendent/Commissioner cc Azzara
- Exhibit 32 Superintendent's Letters
- Exhibit 33 Addendum to Census data
- Exhibit 34 Dr. Farrie's Report
- Exhibit 35 2015 SPRA Lakewood
- Exhibit 36 2016 SFRA Lakewood
- Exhibit 37 Title I LHS
- Exhibit 38 NJ LHS School Performance Report
- Exhibit 39 Median Age
- Exhibit 40 Lakewood Revenue Gap updated FY18
- Exhibit 41 Municipal Overburden
- Exhibit 42 16taxes.xls
- Exhibit 43 Urban and Surrounding Districts Property Taxes
- Exhibit 44A Focus and Priority Schools
- Exhibit 45 Toms River Supervisors and Assistant Superintendents
- Exhibit 46 Brick Supervisors and Assistant Superintendents

- Exhibit 47 Jackson Supervisors and Assistant Superintendents
- Exhibit 48 Toms River Personnel Agenda June 22, 2018
- Exhibit 49 Jackson Agenda May 16, 2017
- Exhibit 50 Brick Agenda June 1, 2018
- Exhibit 51 Lakewood Agenda August 30, 2017
- Exhibit 52 Supervisors pp.35-36 Lakewood Agenda August 30, 2017
- Exhibit 53 page 19, June 1, 2011 Agenda abolishing auto shop
- Exhibit 54 page 12, Agenda May 9, 2005 abolishing Subject Supervisors
- Exhibit 55 page 1, Two assistant superintendents September 27, 2004
- Exhibit 56 2006-07, Nonpublic/Public Population
- Exhibit 57 Staff Letter February 18, 2018
- Exhibit 58 February 5, 2018 letter to Commissioner
- Exhibit 59 February 15, 2018 Letter to Commissioner
- Exhibit 60 Certification of Dr. Farrie
- Exhibit 61 Certification of Mr. Henshaw
- Exhibit 62 OPRA February 18, 2018
- Exhibit 63 Statewide PARCC scores
- Exhibit 64 Individual districts PARCC spreadsheet
- Exhibit 65 Lakewood, neighboring districts and DFG A districts PARCC scores
- Exhibit 66 Original March 15, 2018 State Aid Printouts
- Exhibit 67 2018-19 User Friendly Budget
- Exhibit 68 May 7, 2018 State Aid Advance Approval Letter
- Exhibit 69 July 13, 2018 Revised State Aid Printouts
- Exhibit 70 Revised Aid Guidance Document
- Exhibit 71 Certified Agenda-specifically pages 6 and 7
- Exhibit 72 2017-18 Extraordinary Aid Approval
- Exhibit 73 Emergency Aid Resolution
- Exhibit 74 Three State Aid Advance Letters
- Exhibit 75 Melvin Wyns CV
- Exhibit 76 Melvin Wyns Expert Report
- Exhibit 77 Lakewood Tables
- Exhibit 78 2017 Equalization Values
- Exhibit 79 2018 Equalization Values

- Exhibit 80 Lakewood 2008-09 Budget Revenues
- Exhibit 81 Commissioner Letter October 26, 2018

For respondent:

- R-1 2018-2019 Projected State School Aid Notice
- R-2 2018-2019 Projected State School Aid Notice-Revise, Aid Adjustment Pursuant to FY19 Appropriations Act
- R-3 Tax Levy History FY2011-FY2018
- R-4 2016-2017 User Friendly Budget
- R-5 State Total and Lakewood Extraordinary Aid (Exaid) Allocations, FY2012-FY2017
- R-6 Summary of Lakewood 12/13 Enrollment
- R-7 Chapter 192/193 Non-Public School Aid for Lakewood vs. State, FY2009-FY2017
- R-8 Other Non-Public School Aid for Lakewood, FY2015-FY2017
- R-9 Total Public and Non-Public Aid from District Aid Notices (excluding facilities), FY2015-2017
- R-10 Equalized Property Valuation for Lakewood, FY2007-FY2018
- R-11 SSA Summary
- R-12 Equalized Property Valuation for Lakewood, FY2011-FY2018
- R-13 Tax Levy and Local Fair Share History, FY2011-FY2018
- R-14 Equalized School Tax Rate History for K-12 Districts with Between 5,700 and 6,300 Students as of 2017
- R-15 New Jersey State Legislature, Office of Legislative Services, Office of State Auditor, Township of Lakewood School District Audit Covering Time Period July 1, 2011-December 31, 2013 with Lakewood School District Response
- R-16 Summary of Lakewood Public School District Special Education Settlement Agreements for Disenrolled Students
- R-17 Formula for Success
- R-18 Summary of Lakewood Non-Public Transportation
- R-19 Easel Notes 1
- R-20 Transportation Analysis, Lakewood School District FY2013-FY2017

- R-21 [Not offered]
- R-22 Office of Fiscal Accountability and Compliance (OFAC) Review of Application for State School Aid (ASSA) and District Report of Transported Resident Students (DRTRS) as of October 2011, dated May 19, 2014
- R-23 Letter from Robert Ortley, OFAC, to Isaac Zlatkin, Board President, Lakewood Township Board of Education, regarding Corrective Action Plan for May 19, 2014 audit of ASSA and DRTRS, with attachments, dated August 29, 2014
- R-24 OFAC Review of Lakewood Board of Education's Application for Extraordinary Aid (EXAID) for Special Education Costs, for FY2011-2012, dated August 15, 2014
- R-25 OFAC Review of Chapter 193 Non-Public Auxiliary Services Aid, for FY2011-2012, dated February 12, 2016
- R-26 June 16, 2015 Memo from David Hespe, Commissioner of Education to Andrew P. Sidamon-Bristoff, State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-27 June 23, 2016 Memo from David Hespe, Commissioner of Education to Form M. Scudder, Acting State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-28 November 9, 2017 Memo from Kimberly Harrington, Commissioner of Education to Ford M. Scudder, State Treasurer regarding State Aid Advance for Lakewood School District (P-74)
- R-29 Letter from Glenn Forney, Deputy Assistant Commissioner, Division of Finance, to Laura A. Winters, Superintendent Lakewood Township School District, regarding Additional State Aid, dated May 7, 2018 (P-68)

149-21

OAL Dkt. No. EDU 11069-14
Agency Dkt. No. 156-6/14

New Jersey Commissioner of Education

Final Decision

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; Henry Moro and Ira Schulman, individually and as Guardian ad Litem for A.S.,

Petitioners,

v.

David Hespe, Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; and New Jersey Department of Education,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the parties and participants pursuant to *N.J.A.C.* 1:1-18.4, and their replies thereto.¹

Petitioners in this matter are parents of children who attend Lakewood Township's public schools. In a 2014 petition² filed against the New Jersey Commissioner of Education, the New Jersey Department of Education (Department), and the New Jersey State Board of Education (collectively, "Respondents"), petitioners alleged that the Lakewood

¹ Participant Lakewood Township Board of Education did not file a reply.

² Petitioners amended their petition on September 4, 2018.

Township Board of Education (Lakewood) is unable to provide its public school students with a thorough and efficient education (T&E) because it does not receive sufficient funding under the School Funding Reform Act, *N.J.S.A.* 18A:7F-43 to -70 (SFRA). Petitioners maintain that the SFRA fails to account for the amount the district pays in special education and transportation costs for the large number of resident students who attend private schools. Subsequently, Lakewood and Paul Tractenberg, Esq., joined this matter as participants.³⁴

Following a hearing, the Administrative Law Judge (ALJ) found that Lakewood's public school students are not receiving T&E; however, petitioners failed to meet their burden of demonstrating that the SFRA is solely or significantly to blame. The ALJ found that the population boom in Lakewood Township over the past twenty years has resulted in a rise in attendance at private schools, totaling almost 30,000 non-public school students compared to approximately 6,000 students who attend Lakewood public schools. This causes a strain on the district financially, as the private school students are entitled to transportation at Lakewood's expense; further, tens of millions of dollars are spent each year to send special education students to out-of-district placements.

The ALJ concluded that Lakewood's public school students are not receiving T&E as they are not being prepared for college, career and life under the New Jersey Student Learning Standards. The ALJ found that the education received by Lakewood's students is not constitutionally adequate based on cuts in industrial arts and auto mechanics, foreign language programs (leaving Spanish as the sole option), low standardized test scores, chronic absenteeism

³ Mr. Tractenberg is a Professor of Law Emeritus and Board of Governors Distinguished Service Professor at Rutgers University. He established the Education Law Center, the Institute on Education Law and Policy, and the Center for Diversity and Equality of Education.

⁴ While Lakewood initially declined to join this matter as a party and joined instead as a participant in 2016, Lakewood subsequently filed a motion to intervene as a party at the start of the hearing in 2018, which was denied.

rates, increased dropout rates, low graduation rates, and low New Jersey Quality Single Accountability Continuum scores. Additionally, the ALJ considered the increased rates of teacher turnover, low per pupil classroom spending and classroom salaries, and the lack of a preschool program for three-year-old general education students in determining that Lakewood students are not receiving T&E.

Nevertheless, the ALJ found that the SFRA is not unconstitutional as applied to Lakewood and that Lakewood has failed to take steps to increase its ability to provide T&E. For example, the ALJ explained that Lakewood's transportation costs have continued to increase annually from \$23M in 2014-15 to \$31M in 2018-19, and there is little evidence that Lakewood has done everything possible to cut down these costs; further, there is no evidence that these rising costs are solely due to the increasing number of nonpublic school students in the district. Additionally, the ALJ noted that a large portion of Lakewood's budget is dedicated to special education due to the number of out-of-district placements (specifically, 343 special education students were placed in private schools for a cost of \$33M in 2018-19), but the record lacks evidence of any steps taken to set up a district-run program to save money by educating special education students in-district, as the Department has urged. The ALJ also reasoned that Lakewood has not made efforts to raise taxes to the extent permitted under the SFRA and does not offer a comprehensive preschool for three-year-old general education students. Further, the ALJ added that other legislation outside the SFRA has affected Lakewood financially, such as a tax levy cap on school districts and the annual Appropriations Act.

Finally, to address the deprivation of T&E, the ALJ recommended the Department to conduct a needs assessment with the goal of assessing Lakewood's educational needs and identifying ways to successfully address same. Through the assessment, the ALJ

hopes that the Department's transportation, special education, and preschool experts will be able to help identify strategies to deliver T&E to Lakewood's public school students.

In their submissions, petitioners agree with the ALJ that Lakewood students are not receiving T&E. Petitioners maintain that Lakewood's once rich curriculum has been reduced to bare-bones. Test scores have fallen, college enrollment is low, and any reported gains in those figures are insignificant. Petitioners explain that the district consists of low-income residents with a high minority population and limited English proficiency. Further, while Lakewood may offer educational opportunities to its students in areas such as vocational education, technology and the arts, petitioners argue that such programs provided through federal funding cannot be considered when evaluating whether students are receiving T&E as they are not funded through the district's operating budget.

While agreeing that Lakewood does not provide its students with the constitutionally required T&E, petitioners take exception to the ALJ's finding that the SFRA is not to blame for Lakewood's inability to provide T&E. First, petitioners argue that the ALJ applied the incorrect standard when she found that petitioners did not meet their "heavy burden," and instead should have applied a preponderance of the evidence standard. Petitioners then argue that the ALJ erred in finding that the district is not taxing up to its local fair share. According to petitioners, the ALJ improperly faulted Lakewood for not raising taxes by the maximum amount allowed during prior years when it did not need the additional funding, as well as for the failure of voters to pass a referendum. With respect to the Appropriations Act, petitioners maintain that they would not have had enough funding even with the amount that was cut in appropriations. Additionally, petitioners disregard the ALJ's findings on preschool because it was not addressed by the parties.

Petitioners emphasize that the SFRA provides funding based on 6,000 public school students, yet Lakewood is also required to pay transportation costs for an additional 30,000 private school students. Petitioners argue the ALJ erred in finding that rising transportation expenses are not totally attributable to the increasing number of nonpublic students. The record demonstrates that the district adds 2,500 to 3,000 nonpublic students each year, and the state monitors testified that Lakewood is operating its pupil transportation as efficiently as it can. Additionally, petitioners point out that the state monitors have not found ways to cut costs in special education. Finally, petitioners argue that the provision of advance aid is unsustainable and is a disguise for the failure to provide T&E; the ALJ should have found that the loans, as applied to Lakewood, are inconsistent with T&E. Accordingly, petitioners urge the Commissioner to reject the portion of the Initial Decision finding that SFRA is not unconstitutional as applied to Lakewood.

In their submissions, respondents take exception to the ALJ's conclusion that Lakewood is unable to provide T&E. Respondents argue that with the Department's assistance, the district has shown steady improvement on standardized test scores and graduation rates. Additionally, they contend that the district offers classes and opportunities to students in basic skills, vocational, arts and technology to prepare them for college, career and life. As such, respondents urge the Commissioner to reject this part of the Initial Decision.

Respondents, however, agree with the ALJ that the SFRA is not unconstitutional as applied to Lakewood. They argue that the ALJ appropriately applied a heavy burden on petitioners to demonstrate that the SFRA was solely or significantly to blame for any failure to provide T&E. Respondents are in accord with the ALJ's determination that Lakewood's fiscal mismanagement, general financial condition, and locally made choices have impacted

Lakewood's ability to provide a constitutionally-mandated education. Accordingly, respondents urge the Commissioner to reject the ALJ's conclusions regarding T&E.

Participant Tractenberg makes arguments similar to those of the petitioners. Specifically, he agrees with the ALJ that Lakewood cannot provide T&E to its public school students, but argues that: the ALJ applied the wrong burden with respect to whether the SFRA is constitutional; the ALJ's findings of fact do not support her conclusion that the SFRA is not significantly responsible for Lakewood's inability to provide T&E, and the ALJ's alternative explanations for Lakewood's financial situation are unsupported. Tractenberg further contends that the needs assessment ordered by the ALJ will not be helpful, and instead urges the Commissioner to take steps to forgive Lakewood's advance state aid repayments, support legislative action to adjust the SFRA's formula to respond to Lakewood's unique demographics, seek statutory changes so that the members of Lakewood's Board of Education accurately represents the public-school community rather than people who do not send children to public school, and consider a State takeover of the district.

Lakewood requests that the Commissioner reopen this matter and allow it to proceed as an intervenor – rather than a participant – so that it may present additional evidence of the significant progress and improvements the Board has made toward delivering T&E.⁵ Lakewood contends that it is providing T&E to its students, but that the funding formula of the SFRA is unconstitutional as applied to Lakewood.

Upon review of the record in this matter, the Commissioner disagrees with the ALJ that Lakewood is not providing T&E to its public school students. While the Commissioner acknowledges the ALJ's findings regarding the district's shortcomings, the record does not

⁵ The Commissioner denies Lakewood's request to reopen the case as a full record exists in this matter and such action would cause undue delay.

support a conclusion that Lakewood is failing to provide T&E. Notwithstanding, in light of the factual record elicited by the OAL, the Department is directed to conduct a comprehensive review of the District's organization, structure and policies to assess its compliance with the quality performance indicators in accordance with *N.J.A.C.* 18A:7A-11 to determine how the District can improve its educational program.

In *Abbott v. Burke (Abbott II)*, 119 *N.J.* 287 (1990), the New Jersey Supreme Court compared the educational opportunities available at affluent suburban schools and poorer urban districts to evaluate whether the urban schools were receiving a constitutional education. The Court looked at educational inputs, such as access to computers, science laboratories, foreign language instruction, music and art programs, vocational programs, and physical education. *Id.* at 359-62. The Court also explained that adequate physical facilities are also necessary for T&E so that children have an appropriate environment where they can learn. *Id.* at 362-63. Additionally, T&E can be measured by test scores, dropout rates, and attendance at college, in addition to teacher-student ratios and experience level of the staff. *Id.* at 366-68; 391. Similarly, in *Bacon, et al. v. New Jersey State Department of Education*, State Board Decision No. 4-03, decided January 4, 2006 at 39-40, the New Jersey State Board of Education evaluated whether districts were providing T&E and considered standardized test scores, dropout rates, and college attendance, in conjunction with “teacher-student ratios and the education and experience level of the professional staff, as well as facilities to accommodate appropriate class sizes, science labs, media centers and libraries, and the availability of advanced placement courses and programs for gifted students, art and music programs and quality physical education programs.”

While Lakewood's standardized test scores are below the State average, they have shown consistent improvement. For example, in the 2014-15 school year, 23 percent of high

school students met or exceeded expectations on the PARCC English assessment, and 5 percent met or exceeded expectations in math. By 2018-19, those scores rose to 33 percent for English and 21 percent in Math. Additionally, graduation rates were close to 75% in the 2014-15 school year and rose to 81% in 2018-19. With the exception of absenteeism, Lakewood has also met all of its Every Student Succeeds Act (ESSA) accountability targets. Additionally, while some of the educational opportunities at Lakewood have suffered cuts, including programs in industrial arts and auto mechanics, Lakewood still offers a range of classes and programs. Lakewood offers all of the required classes for graduation, and also offers a gifted program beginning in elementary school, along with high school Advanced Placement (AP) classes across several subjects, including calculus, English, Physics I and II, Spanish, and U.S. History. Lakewood offers art and music programs at every level, including elementary school. Specifically, the district offers band, chorus, and orchestra, as well as music lessons beginning in fourth grade. Furthermore, computer skills and library skills classes are offered beginning at the elementary level, and guidance counselors are available at all grade levels.⁶ While Lakewood only offers Spanish as a foreign language, it does provide opportunities for students to study other foreign languages online. Although Lakewood does have a high rate of teacher turnover and the student-teacher ratio in Lakewood's schools is higher than the State average, Lakewood did meet its ESSA facility accountability targets, with the exception of the middle school.

When considering the standards articulated in *Abbott* and *Bacon*, the Commissioner finds that the education provided by the Lakewood school district meets the constitutional threshold as students are prepared for college, career, and life under the NJSL.

⁶ Additional programs that are offered at Lakewood through Perkins or Title I grants include robotics, coding, horticulture, culinary, fashion and apparel, graphics design, photography and film, video technology, business data entry, and a technology classroom that has 3D printers, Apple TV, and a Mac Air Cart.

The following excerpt from *Abbott II* demonstrates the degree of deficiencies necessary to declare a failure to provide T&E:

In an elementary school in Paterson, the children eat lunch in a small area in the boiler room area of the basement; remedial classes are taught in a former bathroom. In one Irvington school, children attend music classes in a storage room and remedial classes in converted closets. At another school in Irvington a coal bin was converted into a classroom. In one elementary school in East Orange, there is no cafeteria, and the children eat lunch in shifts in the first 1 floor corridor. In one school in Jersey City, built in 1900, the library is a converted cloakroom; the nurse's office has no bathroom or waiting room; the lighting is inadequate; the bathrooms have no hot water (only the custodial office and nurse's office have hot water); there is water damage inside the building because of cracks in the facade; and the heating system is inadequate.

[*Abbott II*, 119 N.J. at 363.]

In evaluating the totality of the evidence, the Commissioner finds that while Lakewood may be struggling to provide its students with the premiere level of education that many have come to expect in New Jersey, these deficiencies do not rise to a constitutional deprivation. The record reflects that standardized test scores are below State averages, but the district is showing slow but steady improvement in that area. Lakewood offers a selection of educational programs, including multiple AP classes, as well as programs in music and art that begin at the elementary school level, which are more comprehensive and wide-ranging than those offered in the *Abbott* and *Bacon* districts. While some programs have suffered cuts, students still have a diverse array of educational course opportunities. The Commissioner acknowledges the lack of experience in Lakewood's teachers, however, in consideration of recognized teacher shortages, the improvement that the district has shown in test scores and graduation rates, together with the district's diverse curriculum, the Commissioner cannot conclude that Lakewood's students are not receiving T&E.

Because petitioners failed to meet the threshold inquiry of establishing Lakewood's failure to provide T&E, the Commissioner need not reach the issue of the constitutionality of the SFRA.⁷ Nevertheless, the Commissioner agrees with the ALJ, for the reasons thoroughly set forth in the Initial Decision, that the SFRA is constitutional as applied to Lakewood.

Accordingly, the Initial Decision of OAL is rejected in part and adopted in part for the reasons set forth above. The petition is hereby dismissed.

IT IS SO ORDERED.⁸



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 16, 2021
Date of Mailing: July 16, 2021

⁷ For these same reasons, the Commissioner need not reach the issue raised in petitioners' exceptions regarding the burden of proof to be applied to the question of whether the SFRA is unconstitutional as applied to Lakewood.

⁸ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

May 12, 2023

VIA EMAIL ONLY

Paul L. Tractenberg, Esq.
123 Washington Street
Newark, NJ 07102
paultractenberg@gmail.com

Arthur H. Lang, Esq.
918 East Kennedy Boulevard
Lakewood, NJ 08701
lakewoodlaw@gmail.com

Re: **Leonor Alcantara, et al. v. Angelica Allen-McMillan, Commissioner of the Department of Education, et al., -- Agency Dkt. No. 156-6/14; Commissioner Decision No. 149-21 -- Appellate Dkt. No. A-3693-20**

Dear Mr. Tractenberg and Mr. Lang:

This matter arose through an administrative Petition of Appeal alleging that the students of the Lakewood School District (Lakewood) were not receiving a constitutionally mandated thorough and efficient education (T&E). It also alleged that the root cause of that failure was that the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -70, was unconstitutional as applied to Lakewood. On July 16, 2021, I issued a final agency decision concluding that the record developed below failed to establish that Lakewood public students were not receiving T&E. Final Decision at 9. Thus, I declined to consider the issue of the as-applied constitutionality of the SFRA. Though I felt that the record fell short of establishing a T&E violation, it did reveal educational deficiencies that warranted further attention. As such, I directed the Department of Education "to conduct a comprehensive review of the District's organization, structure and policies to assess its compliance with the quality performance indicators in accordance with [N.J.S.A.] 18A:7A-11 to determine how the District can improve its educational program." Final Decision at 7.

On March 6, 2023, the Appellate Division issued an opinion reversing my decision, finding that Lakewood's public school students are not receiving T&E. Alcantara v. Allen-McMillan, 475 N.J. Super. 58 (App. Div. 2023). The Appellate Division thus remanded the matter to me for a determination as to whether the SFRA is unconstitutional as applied to Lakewood.

Paul L. Tractenberg, Esq.

Arthur H. Lang, Esq.

May 12, 2023

Page 2

In light of the Appellate Division's finding, and in order to execute my obligations under the remand and provide a well-informed opinion as to whether the SFRA is constitutional as applied to Lakewood, I am now directing the Department to expedite the comprehensive review referenced in my final decision. The facts and data that comprised the record before the Office of Administrative Law, the Commissioner, and the Appellate Division, relate primarily to the 2014-15, 2015-16, 2016-17, 2017-18, and 2018-19 school years. Because this information is now outdated and the subsequent intervening years will have revealed additional relevant and informative data, coupled with the fact that there have been unprecedented changes in the field of education as a byproduct of the COVID-19 pandemic, an updated record is required in order to make an appropriately informed decision about the SFRA and its application to Lakewood. The review will require the engagement of experts to examine Lakewood's operations and performance in several key areas, including educational policy, special education, administration and governance, and accounting. In addition to these areas, the review will include, but will not be limited to, an examination of the particular areas of concern raised by petitioners in these proceedings, such as transportation costs for Lakewood's students, and special education funding. Upon completion of this expedited comprehensive review, Lakewood and the petitioners will have an opportunity to respond to the resulting report and recommendations prior to the issuance of a final agency decision on the as-applied constitutionality of the SFRA.

In addition to assisting in that determination, the comprehensive review will also allow the Department to better identify the root causes that led to the educational deprivations identified by the court and determine the appropriate responses. In the interim, the Department is exploring what assistance, relief, or aid may be available to more immediately remedy the noted educational deficiencies, including, but not limited to, the Department's July 8, 2022 and May 10, 2023 approval of the District's application for a waiver to proceed with contracting for student transportation services for the 2022-2023 and 2023-2024 school years. In addition, the Department has provided Lakewood monetary assistance, relief and aid through the provisions of loans against State aid beginning in June 2015 and through March 2021 totaling \$137,420,524.00. Most recently, and following the influx of Federal funding beginning with the Coronavirus Aid, Relief, and Economic Security Act beginning in 2020, on May 1, 2023 Lakewood received an additional approval of a loan against State aid for the 2022-2023 school year in the amount of \$27,704,046.00. Once the expedited comprehensive review is complete, the Department will be better equipped on how best to ensure that Lakewood's public school students receive the necessary education required by our State's Constitution.

Sincerely,



Angelica Allen-McMillan, Ed.D.

Acting Commissioner

AAM/JB/JS

142-23

OAL Dkt. No. 11069-14

Agency Dkt. No. 156-6/14

New Jersey Commissioner of Education

Order on Emergent Relief

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; Henry Moro and Ira Schulman, individually and as Guardian ad Litem for A.S.,

Petitioners,

v.

Angelica Allen Mc-Millan, Acting Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; and New Jersey Department of Education,

Respondents.

The motion for emergent relief filed by petitioners and the opposition thereto filed by respondents have been reviewed and considered.

In a 2014 petition¹ filed against the New Jersey Commissioner of Education, the New Jersey Department of Education (Department), and the New Jersey State Board of Education (collectively, “respondents”), petitioners alleged that the Lakewood Township Board of Education (Lakewood) is unable to provide its public school students with a thorough and efficient education (T&E) because it does not receive sufficient funding under the School

¹ Petitioners amended their petition on September 4, 2018.

Funding Reform Act, N.J.S.A. 18A:7F-43 to -70 (SFRA). Following proceedings at the Office of Administrative Law (OAL), the Commissioner issued a decision concluding that petitioners failed to meet the threshold inquiry of establishing Lakewood's failure to provide T&E; accordingly, the Commissioner did not reach the issue of the constitutionality of the SFRA. *Alcantara v. Hespe*, Commissioner Decision No. 149-21 (July 16, 2021). Petitioners appealed, and the Appellate Division reversed and remanded the matter with instructions for the Commissioner to consider petitioners' substantive arguments pertaining to the SFRA. *Alcantara v. Allen-McMillan*, 475 N.J. Super. 58 (App. Div. Mar. 6, 2023). On May 1, 2023, petitioners filed a motion for emergent relief, seeking an Order that the Commissioner would issue a final decision on the remand from the Appellate Division no later than May 15, 2023.

On May 12, 2023, the Commissioner issued a letter directing the Department to expedite the comprehensive review of the Lakewood school district referenced in *Alcantara v. Hespe, supra*. The Commissioner indicated that the information that comprised the record before the OAL, the Commissioner, and the Appellate Division is now outdated and found that an updated record is required in order to make an appropriately informed decision about the SFRA and its application to Lakewood. The comprehensive review, as well as an opportunity for petitioners and Lakewood to respond to the resulting report and recommendations, will occur prior to the issuance of a final agency decision on the as-applied constitutionality of the SFRA.

Upon review of petitioner's motion for emergent relief, and in light of the May 12, 2023 letter, the Commissioner concludes that the motion must be denied, as it is now moot. "A case is technically moot when the original issue presented has been resolved . . .". *DeVesa v. Dorsey*, 134 N.J. 420, 428 (1993). With the Commissioner's determination of a schedule for the

proceedings in this matter, as outlined in the May 12, 2023, letter, there is no longer any question pertaining to the timing of her decision that requires resolution.

Accordingly, petitioners' motion for emergent relief is denied.

IT IS SO ORDERED.


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2023

Date of Mailing: May 12, 2023

ORDER ON MOTION

LEONOR ALCANTARA
V.
ANGELICA ALLEN MC-MILLAN

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: AM-000482-22T1
MOTION NO.: M-005033-22
BEFORE: PART A
JUDGE(S): MARY GIBBONS WHIPPLE
MORRIS G. SMITH

MOTION FILED: 05/18/2023
ANSWER(S) 05/30/2023
FILED:

BY: LEONOR ALCATARA
BY: EDUCATION

SUBMITTED TO COURT: June 08, 2023

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 9th day of June, 2023, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL DENIED

FOR THE COURT:



MARY GIBBONS WHIPPLE, J.A.D.

156- 6/14
STATEWIDE
KLK



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

August 22, 2023

VIA EMAIL ONLY

Paul L. Tractenberg, Esq.
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Arthur H. Lang, Esq.
918 East Kennedy Boulevard
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lakewoodlaw@gmail.com

Re: Leonor Alcantara, et al. v. Angelica Allen-McMillan, Acting Commissioner of the Department of Education, et al., -- Agency Dkt. No. 156-6/14; Commissioner Decision No. 149-21 -- Appellate Dkt. No. A-3693-20

Dear Mr. Tractenberg and Mr. Lang:

This letter serves as an update regarding the Department of Education's (Department) review of the Lakewood School District in the above-referenced matter.

As you are aware, on March 6, 2023, the Appellate Division issued an opinion finding that Lakewood's public school students are not receiving a thorough and efficient education (T&E). Alcantara v. Allen-McMillan, 475 N.J. Super. 58 (App. Div. 2023). As such, it remanded the matter to me for a determination as to whether the School Funding Reform Act (SFRA) is unconstitutional as applied to Lakewood. And as I explained in my previous letter of May 12, 2023, in light of the Appellate Division's decision, and to execute my obligations under the remand, I directed the Department to expedite its comprehensive review of the Lakewood School District.

In furtherance of my directive, Dr. Kimberley Harrington Markus, a former Commissioner of the Department, has been retained to oversee the comprehensive review and author a report and recommendations at its conclusion. Experts Public Consulting Group and Jeremiah Ford have been retained to assist Dr. Harrington in her review. Additional experts may be retained throughout the course of the review as needed. The experts will collaborate with the Department to examine the

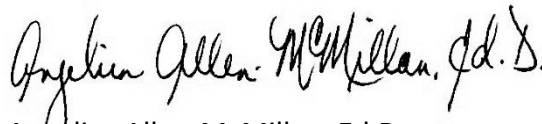
Paul L. Tractenberg, Esq.
Arthur H. Lang, Esq.
August 22, 2023
Page 2

Lakewood School District's operations and performance in several key areas, including educational policy, special education, administration and governance, and accounting. In addition to these areas, the review will include, but will not be limited to, an examination of the particular areas of concern raised by petitioners in these proceedings, such as transportation costs for the Lakewood School District's students and special education funding. As part of the process, these experts will review information currently held by the Department and will require additional information directly from the Lakewood School District. Their review may also require in-person access, meetings, and observation, among other things.

I anticipate the review will take approximately six months; however, this is only a preliminary estimate as the volume of information to be reviewed and complexity of the required analysis are unknown at this time. Upon completion of the expedited comprehensive review, a report containing findings and recommendations will be issued. The Lakewood School District and the petitioners will have an opportunity to respond to the resulting report prior to the issuance of any final agency decision on the as-applied constitutionality of the SFRA. A specific briefing schedule will be issued upon the submission of Dr. Harrington's report.

I will continue to keep you informed as this process moves forward.

Sincerely,



Angelica Allen-McMillan, Ed.D.
Acting Commissioner

AAM/CH/JS

c: Laura Winters, Superintendent (lwinters@lakewoodpiners.org)

ORDER ON MOTION

LEONOR ALCANTARA,
INDIVIDUALLY AND AS GUARDIAN
AD LITEM FOR E.A.;
LESLIE JOHNSON, INDIVIDUALLY
AND AS GUARDIAN AD LITEM FOR
D.J.; ETAL
V.
DAVID HESPE, COMMISSIONER OF
THE NEW JERSEY
DEPARTMENT OF EDUCATION;
ETAL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-003693-20T2
MOTION NO.: M-001013-23
BEFORE: PART A
JUDGE(S): MARY GIBBONS WHIPPLE
HANY A. MAWLA
MORRIS G. SMITH

MOTION FILED: 10/24/2023

BY: LESLIE JOHNSON, INDIVIDUALLY
AND GUARDIAN AD LITEM FOR
D.J.; JUANA PEREZ, IND. AND GAD
FOR Y.P. AND B.A.; ALLEN
SCHULMAN, IND. AND GAD FOR
A.S.; AND MAXIMO GALEANA, IND.
AND GAL FOR I.G.M AND Y.G.

ANSWER(S) 11/17/2023
FILED:

BY: DEPARTMENT OF EDUCATION

SUBMITTED TO COURT: November 22, 2023

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON
THIS 27th day of November, 2023, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO FILE OVERLENGTH

GRANTED AND OTHER

Page 1 of 2

Ra145

BRIEF
MOTION IN AID OF LITIGANTS'
RIGHTS

GRANTED

SUPPLEMENTAL: We grant the motion to file an overlength brief and direct the Commissioner to conclude their review and comply with our remand by April 1, 2024.

FOR THE COURT:



MARY GIBBONS WHIPPLE, J.A.D.

EDU 11069-14 STATEWIDE
ORDER - REGULAR MOTION
JC

COMPREHENSIVE REVIEW OF THE LAKEWOOD PUBLIC SCHOOL DISTRICT

Dr. Kimberley Markus

March 1, 2024

Introduction

Dr. Kimberley Markus, under the direction of the New Jersey Department of Education (NJDOE), performed a comprehensive organizational review of the Lakewood Public School District (LPSD) pursuant to Acting Commissioner Angelica Allen-McMillan's May 12, 2023, executive order. The purpose of this review is to provide an updated educational record that will allow the Department to better identify the root causes that led to the educational deprivations within Lakewood Public School District identified by the Court and to determine appropriate responses.

Case History

The case history of Lakewood Public School District leading up to this request to conduct a comprehensive review of the District is complex and lengthy. In summary,

- In 2014, parents of children enrolled in Lakewood Public School District filed a petition alleging the District was not providing its public-school students a thorough and efficient education (T&E) as required by the New Jersey State's Constitution and that the School Funding Reform Act (SFRA) is unconstitutional as applied to the District. The Administrative Law Judge (ALJ) found that Lakewood's students are not receiving T&E, but that the SFRA is not unconstitutional.
- The Commissioner then rejected ALJ's finding as to T&E, concluding that its students are receiving T&E; but recognizing that there are some problems in Lakewood Public School District, she ordered a comprehensive review of the District.
- In March 2023, the Appellate Division reversed the Commissioner's decision, and found that Lakewood's students are not receiving T&E. It then ordered the Commissioner to issue a decision on the petitioners' SFRA claim. Following the remand, the Commissioner issued a letter announcing that she would be expediting the comprehensive review prior to issuing a decision on the SFRA.¹

The New Jersey Constitution states that, "[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."² Under the New Jersey Quality Single Accountability Continuum (NJQSAC), school districts are evaluated in five key component areas of school district effectiveness — instruction and program, personnel, fiscal management, operations, and governance — to determine the extent to which school districts are providing a thorough and efficient education.

Purpose

The purpose of this report is to provide the Commissioner with a comprehensive review of the Lakewood Public School District. It aims to provide a comprehensive analysis of current practices and policies across key areas—Governance, Curriculum and Instruction, Special

¹ Leonor Alcantara, et al. v. Angelica Allen-McMillan, Commissioner of the Department of Education, et al., -- Agency Dkt. No. 156-6/14; Commissioner Decision No. 149-21 -- Appellate Dkt. No. A-3693-20

Education, Finance, and Transportation—identifying challenges and pinpointing areas for improvement. By offering detailed findings and actionable recommendations, the report endeavors to guide the Lakewood Public School District toward enhanced operational efficiency, educational quality, and equitable access to services for all students. Ultimately, this document is designed to catalyze positive change, fostering an environment where every student can thrive and achieve their fullest potential, supported by robust governance, dynamic curriculum, sound financial management, and reliable transportation.

Questions being Evaluated

- What is the role of SFRA in deprivation of T&E in Lakewood Public School District?
- What other causes may be impacting the Lakewood Public School District to deliver T&E?

Summary of Areas of Focus

In the subsequent summaries, the potential factors influencing the provision of a Thorough and Efficient (T&E) education and the role that the School Funding Reform Act (SFRA) calculations may have on this educational standard have been examined. Five critical areas were assessed: Governance, Curriculum & Instruction, Special Education, Finance, and Transportation. A concise review of each category is presented, providing an overview of the prevailing conditions and administrative actions within these domains. Detailed exploration of each summarized item will be further elaborated in the Findings section of this report, painting a comprehensive picture of their impact on the T&E of the education system in the Lakewood Public School District.

Governance:

In the Governance section, the administrative and policy-making mechanisms that are instrumental in shaping the educational journey of the students within the LPSD are explored. The analysis scrutinizes the efficacy of the governing body and its adherence to established protocols, as well as its strategic decision-making capabilities. The following summary offers a glimpse into the intricate workings of the District's governance and lays the groundwork for a more expansive exploration in the subsequent sections of this report.

In the area of governance, there are two main areas of focus: 1) policy-setting and oversight practices of the Lakewood Board of Education and 2) leadership and decision-making practices. These two areas are intertwined, and when operating to their fullest, have a significant impact on student outcomes. These two areas hold one another accountable and allow for there to be multiple checks and balances when making decisions that impact all students.

- **Board Meetings.** Public Board meetings practices do not align with practices of comparable districts or follow recommendations from the New Jersey School Boards Association.
- **Board Policies.** Board meeting agendas contained policy updates and new policies; however, there was no policy discussion during any of the observed meetings. There are outdated and/or ill-informed policies that directly impact student learning.
- **Financial Transparency.** Board involvement with budget development was reported to be minimal. There were no observed board meetings that discussed financial issues or presented detailed information regarding budgets. There appears to be no urgency or accountability for the District's financial situation by leadership.

- **Board Attorney.** The Lakewood Board of Education attorney plays a far more active role than the typical board attorney in District business. The Board Attorney stated that his role is not only Board Attorney, but he also provides the District a service like a Communications Director. Lakewood's legal expenses per pupil are significantly higher than comparison districts.
- **Culture.** A culture of low expectations for students was observed, and high levels of distrust between central office administration and school-based staff.
- **Communication.** There are communication gaps from the central office administration with both internal and external stakeholders.
- **Strategic Plan.** The organizational management of the District is not based on a coherent system focused on a District strategic plan. Without a strategic plan, the District relies on a series of annual goals that lack accountability as they do not have metrics that can determine how successful the District is in meeting their goals. Several annual goals are duplicated from previous years.
- **Reporting Structure.** The organization's reporting structure does not follow typical practice, as it is designed with many administrators reporting directly to the Superintendent. The Superintendent has 24 direct reports, including all curriculum supervisors, and there is no Assistant Superintendent.
- **Decision-making.** Large-scale district planning appears to occur behind closed doors. For example, the District changed the configuration of schools for elementary and middle schools this school year. The grade configuration consisted of moving hundreds of students and staff with little notice or explanation as to why the decision was made. There was no discussion at Board meetings or opportunity to provide public input.
- **Human Resources Practices.** The District reports struggling to hire staff to fill all their vacancies each year. Lack of competitive salaries with neighboring districts was cited as a key barrier, yet several current practices may impact staff morale. New staff are hired at a higher pay rate than veterans and 77 teacher contracts have been non-renewed in the past five years. School administrators reported frequent building reassignments, with limited communication or notice.
- **Morale.** Staff stated multiple times that the District has a morale issue. Staff reported not feeling respected and fear retaliation from the administration if they speak out in a critical way. Instances of unresponsiveness or unclear communication from the District contribute to a perception of inadequate support.

Curriculum & Instruction:

In the Curriculum and Instruction summary, the core educational programs and teaching methodologies that constitute the foundation of student learning experiences within the LPSD are examined. This segment scrutinizes how curricular design, instructional quality, and pedagogical approaches contribute to or detract from the attainment of a Thorough and Efficient (T&E) education. The ensuing narrative provides a synthesized overview of the findings, setting the stage for a detailed dissection of these elements in the body of the report, where the complexities will be unpacked and pathways for enhancement will be recommended.

Teaching and learning grounded in evidence-based practices is an essential component of student success in the classroom. Locally developed curriculum aligned to the state standards, New Jersey Student Learning Standards (NJSLS), combined with resources that are grounded in research equip educators with a guide for delivering classroom instruction to their students. It is imperative that all students are considered when developing curriculum and selecting