
LEONOR ALCANTARA, individually and as
Guardian ad Litem for E.A.; LESLIE
JOHNSON, Individually and as Guardian ad
Litem for D.J.; JUANA PEREZ,
Individually and as Guardian ad Litem for Y.P.;
TATIANA ESCOBAR
Individually; and IRA SCHULMAN,
Individually, and as Guardian ad Litem for A.S.,

Petitioners,

v.

DAVID HESPE, COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
EDUCATION; the NEW JERSEY STATE
BOARD OF EDUCATION, and the NEW
JERSEY DEPARTMENT OF EDUCATION,

Respondents.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

OAL Dkt. No. EDU 11069-2014S
AGENCY Dkt. No. 156-6/14

RESPONDENTS' POST-HEARING SUMMATION AND ARGUMENT

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PRELIMINARY STATEMENT

Petitioners have failed to demonstrate that the students in Lakewood have not received a thorough and efficient education (“T&E”) as required by the New Jersey Constitution. See N.J. Const. art. VIII, § 4, ¶ 1. Rather than present evidence of any constitutional inadequacies in their education, Petitioners’ evidence focused on the uncontested facts that the Lakewood Public School District (“Lakewood” or “District”) has been operating at a deficit and that the State Department of Education (“Department”) loaned it money through a state aid advance to balance its budget. Contrary to Petitioners’ apparent assumption, such facts do not amount to a per se violation of the T&E Clause. Petitioners’ evidence, rather than demonstrate that the students in Lakewood are being denied T&E, in fact supports a finding that the students have been receiving T&E. In order for a statute to be deemed unconstitutional, first it must be shown that there is a constitutional deprivation

Both parties have shown that the problems in Lakewood cannot be attributed to a single focal point, but rather involve a multitude of issues including other legislation and local decision making. Local decisions and District mismanagement do not render the SFRA unconstitutional.

Declaring the SFRA unconstitutional as applied to the District is not supported by the record and would not solve its current financial issues.

PROCEDURAL HISTORY

On June 24, 2014, Petitioners, residents in Lakewood Township and their children who attend either the public schools of Lakewood or one of the many private schools located within the Township's boundaries,¹ filed a Petition of Appeal with the Commissioner against the Commissioner, the Department, and the New Jersey State Board of Education ("State Board") (collectively "Respondents").

Respondents filed a Motion to Dismiss the Amended Petition in lieu of an answer on September 2, 2014, arguing that (1) Petitioners failed to join the District as a necessary party; (2) Petitioners lacked standing; and (3) the remedies sought are not available in this type of proceeding. Petitioners opposed the Motion on October 22, 2014, and the matter was transmitted to the OAL as a contested case.

On March 11, 2015, the Honorable John S. Kennedy, A.L.J. granted a motion to participate filed by Paul L. Tractenberg, who was representing his own personal interests. Tractenberg opposed Respondents' then-outstanding Motion to Dismiss the Amended Petition. Following oral argument on June 9, 2015, ALJ Kennedy denied Respondents' Motion to Dismiss on July 24, 2015. ALJ Kennedy ruled: (1) Lakewood is not a necessary party to this litigation; (2) Petitioners have standing to challenge the school funding; and (3) the current matter is appropriately before this tribunal to establish a complete record and exhaust all administrative remedies.²

¹ The original named Petitioners were Leonor Alcantara, individually and on behalf of E.A.; Leslie Johnson, individually and on behalf of D.J.; Juana Perez, individually and on behalf of Y.P.; Tatiana Escobar, individually; and Ira Schulman, individually and on behalf of A.S. Alcantara, Johnson, Perez, and Escobar were all identified as "residents of Lakewood, New Jersey who attend or whose children attend Lakewood public schools." Schulman was identified as "a resident of Lakewood, New Jersey, whose child attends a Lakewood nonpublic school."

² ALJ Kennedy did not require Respondents to file an answer.

On or about February 19, 2016, in the midst of discovery, Petitioners filed a Motion for Summary Decision arguing there was no need to hold a hearing, and no need for further discovery, because, in their opinion, the data necessary to rule on their case was in the public record. Respondents opposed the motion on April 14, 2016, and ALJ Solomon A. Metzger, t/a,³ issued an order denying the motion on July 19, 2016. ALJ Metzger recognized that “[t]here is no question that Lakewood’s demographics pose singular problems for the public-school budget,” but disagreed with Petitioners that that fact was sufficient on its face to establish a constitutional level of deprivation.

On October 4, 2016, the District filed a Motion to Participate in the case, which was granted on November 21, 2016. In May 2017, Petitioners filed a Motion for Emergency Relief related to the District's 2017-2018 budget deficit that Respondents opposed on May 23, 2017. Petitioners withdrew their Motion on May 24, 2017, as the budget deficit was resolved by the Department through a state aid advance. The hearing commenced in February 2018. Petitioners called four fact witnesses and two witnesses declared as experts over the course of five hearing dates in February 2018. Petitioners initially rested at the conclusion of the February 22, 2018 hearing date, and Respondents indicated that they planned to file a motion to dismiss the Amended Complaint. Subsequent to the last scheduled hearing date, Petitioners attempted to enter into stipulations of fact with the Respondents and sought to enter numerous documents into evidence. Following a March 27, 2018, conference on the record, the ALJ resolved Petitioners’ outstanding evidentiary issues and set a briefing schedule for Respondents' motion to dismiss.

Respondents filed their Motion to Dismiss the Amended Complaint on April 30, 2018. Petitioners and the participants opposed the motion, and before it was decided, Petitioners

³ This matter was re-assigned from ALJ Kennedy to ALJ Metzger in or around June 2016. Subsequently, it was re-assigned to ALJ Susan M. Scarola in or around June 2017.

sought to reopen the record to allow for another witness, Melvin Wyns, to testify. Respondents opposed the request. Following oral argument, the Court ordered Petitioners to file another amended Petition, and for Respondents to file an Answer to the Amended Petition. Petitioners were also granted leave to reopen the record to allow Melvin Wyns to testify. Respondents' Motion to Dismiss was held in abeyance until the new filings were submitted and Petitioners concluded their case-in-chief.

Petitioners filed their Second Amended Complaint on September 4, 2018. In the Second Amended Complaint, Petitioners asked the Commissioner to: 1) determine that the SFRA as applied to Lakewood is unconstitutional in that it does not provide sufficient funding to the District to provide its students with a thorough and efficient education (T&E); 2) reliance upon advances of state aid does not provide T&E funding 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 recommend that this be remedied by the Legislature. Respondents filed their Answer on September 18, 2018.⁴

On December 18, 2018, Petitioners called Melvin Wyns to testify as an expert witness. Upon the conclusion of his testimony, Petitioners again rested their case.

This Court denied Respondents' Motion to Dismiss on January 8, 2019, and proceeded to schedule hearing dates to take place in July 2019. Respondents called six witnesses over the course of four hearing dates, and rested their case on July 23, 2019.

The testimony of each witness is summarized below.⁵

⁴ As a typographical error was noted in Respondents' filed Answer, Respondents were permitted to and filed an Amended Answer on October 3, 2018.

⁵ "1T" refers to the transcript of the February 5, 2018 hearing;
"2T" refers to the transcript of the February 7, 2018 hearing;
"3T" refers to the transcript of the February 12, 2018 hearing;

COUNTERSTATEMENT OF FACTS⁶

Testimony of Ross Haber

Dr. Ross Haber, a demographic consultant, was qualified as an expert in demographics. (1T44:11-17). He testified that he was not an expert in finance or in state aid, and was not qualified as an expert in those fields. (1T97:25-98:1; 1T113:22-114:1; 3T38:11 (“I am not an expert in state aid.”)).

Throughout his testimony, Dr. Haber referred to his report, which addressed not only demographic projections, but also budgetary and state aid projections. Dr. Haber stated that he was “not happy with” his report, and recognized that some of the numbers were “mixed up and they shouldn’t be.” (3T104:19-105:3).

Dr. Haber has no formal education in finance or statistical analysis. (1T39:23-40:23). He testified that Petitioners retained him to do a historical analysis and five-year projection of population growth in Lakewood’s public and non-public schools. (1T47:11-15). He relied on “ASSA reports” for historical records of public-school enrollment, and a private school reporting database maintained by the Department to gather non-public school enrollment data. (1T54:2-16). He conceded that non-public schools self-report enrollment figures, and that the

“4T” refers to the transcript of the February 13, 2018 hearing;

“5T” refers to the transcript of the February 22, 2018 hearing;

“6T” refers to the transcript of the August 20, 2018 hearing;

“7T” refers to the transcript of the December 18, 2018 hearing;

“8T” refers to the transcript of the July 9, 2019 hearing;

“9T” refers to the transcript of the July 10, 2019 hearing;

“10T” refers to the transcript of the July 22, 2019 hearing; and

“11T” refers to the transcript of the July 23, 2019 hearing.

⁶ Petitioners in their summation rely on data and documents not in the record, and all references to such should be stricken. Petitioners entered the following exhibits into evidence at the hearing in this matter: P-3, P-7-1, P-7-5, P-8, P-10-2, P-29, P-30, P-34, P-35, P-38, P-42, P-44, P-68, P-74 and P-81.

data is never audited or verified. (3T24:9-16). If children are being bussed in from other communities or states to attend Lakewood's non-public schools, they could be counted in these self-reported enrollment figures. (3T24:25-25:14).

Dr. Haber testified that using the cohort survival methodology, he projected a growth of roughly 5,000 students from the 2017-2018 school year to the 2021-2022 school year in both the public and non-public school populations, though acknowledged that growth could be capped by external factors, such as available residential space. (1T57:25-58:10; 1T61:2-7; 3T35:23-36). He admittedly did not consider that the growing population of Lakewood could correspond to an increase in equalized property value. (3T67:18-21).

Dr. Haber opined on the District's budgetary needs through 2022. He based his projections off of revised and anticipated figures in the User-Friendly Budget, not the actual budget figures, which he conceded would have been the more accurate data set. (1T69:5-71:25; 1T71:1-21; 1T79:3-5; 3T51:17-52:3). Regarding his budgetary projections, he testified, "[l]et me emphasize, they're estimates based upon trends. There's no way for anybody to really come up with an exact amount in the future." (1T83:14-15).

He described his methodology for projecting the budget as an "estimate based upon the increased population." (1T69:5-13; 1T84:11-13). He conceded that in his calculations, he might have double counted some costs. (3T42:19-43:14). Regarding the District's budget for "other services" (a component of the tuition budget), he conceded "I don't have any definition for that – it was just in the budget – so I can't explain what it is." (1T71:11-21).

In projecting Lakewood's anticipated transportation budget, Dr. Haber testified that his methodology was "not an exact science." (1T65:8-15). He "made an assumption that the transportation [costs] would increase" commensurate to the enrollment. (1T65:8-15). When

asked if he considered economies of scale, he responded that “if you add 10 more kids, you’re not going to add 10 more buses . . .” (1T84:24-85:1). He did not consider legal and community factors that could affect the transportation budget moving forward. (3T87:23-88:6; 3T45:5-46:7; 3T56:24-57:12) (e.g., non-renewal of the LSTA pilot program; if the municipality were to build a bridge over Route 9 for students to use; if non-public schools were constructed closer to students’ homes; or if parents elected to send their children to non-public schools closer to their homes).

Dr. Haber then offered his understanding as to how the adequacy budget was calculated. He described the adequacy budget alternately as “the amount that’s actually needed by the State” (1T89:19-21), and “the minimum funding level required to provide a thorough and efficient education” (3T37:21-25), but conceded that his definition did not align with anything in the School Funding Reform Act of 2008 (“SFRA”), N.J.S.A. 18A:7F-43 to -66. (3T38:1-11). He attempted to project the future adequacy budget by holding it flat from 2017-2022, while conceding that the budget would change from year to year if the student Limited English Proficiency (“LEP”) population enrolled in Lakewood changes from year to year. (3T51:5-16).

Dr. Haber concluded that the enrollment in both non-public and public schools is growing, and that there will be an increased need for services. (1T92:7-13). He “[did]n’t think that the District will have the ability to properly educate those students over the next few years.” (1T96:1-6).

Dr. Haber did not consider other alternatives to raising revenue, aside from additional State aid. (3T34:5-22; 3T67:22-55). He did not consider that compared to other high population districts, Lakewood has one of the lowest equalized tax rates in the State. (3T34:5-12).

Dr. Haber testified that in making projections, if the underlying data is not reliable, then the projections will not be reliable. (1T113:2-5). Yet he admitted, repeatedly and consistently, that there were numerous substantive and typographical errors in his analysis, including, but not limited to, miscalculations and double counting costs in projecting the amount of money the District would need going forward: see, e.g., (1T90:6-8; 1T92:2-3; 3T28:25-29:2; 3T30:5-25; 3T31:9,12-18; 3T36:9-17, 21; 3T53:11-25; 3T54:1-15; 3T55:17-25; 3T56:1-7; 3T59:1-19; 3T70:14-17, 23-25; 3T71:1-8; 3T72:1-10; 3T79:1-25; 3T80:1; 3T81:21-25; 3T82:1-10; 3T83:4-14).

Testimony of Laura Winters⁷

Laura Winters has been the District's Superintendent since 2012 and has been employed in the District since 2001. (2T7:18-19; 2T8:8-19). She has a master's degree and is finishing her dissertation for a doctorate of education with a specialty in curriculum instruction and assessment. (2T12:16-25).

Lakewood consists of approximately 6,092 students spread out over 8 schools: 1 high school, 1 middle school, 5 elementary schools, and a preschool. (2T14:21-22; 2T15:9-10). Ms. Winters testified that District schools are at full capacity with too many students per classroom in some instances. (2T16:21-22). She acknowledged that the Lakewood Board of Education could put a Special Question on the ballot to see if the community would be willing to financially assist with facility improvement, but that in the past voters have not supported financial assistance. (2T90:8-11, 16-18). Ms. Winters estimates that approximately 80% of the population would qualify free and reduced lunch, but 100% of the students at Lakewood receive free and reduced lunch through a program paid for by the Department of Agriculture, the

⁷ Ms. Winters testified as a fact witness and was not qualified as an expert. (See 2T10:12-23).

Community Eligibility Provision Program. (2T41:14-25; 2T43:20-21; 2T44:23-25). There are also approximately 30,000 children who reside within the District, but instead attend non-public school. (2T58:13-18).

According to Ms. Winters, approximately 1,538 students in her District are classified as having limited English proficiency (“LEP”), meaning these students are second language learners with a primary language of Spanish. (2T38:12-20; 2T40:18-19). These students receive support from an English as a Second Language (“ESL”) teacher in some classes across all grade levels. (2T38:22-25; 2T39:1-8). A response intervention reading program for students in Kindergarten through grade 2 is in place to assist students who are English Language Learners (“ELL”). (2T97:12-16).

Over the last few years, the District’s Child Study Team (“CST”) has been asked to conduct approximately 500-600 evaluations for special education services of preschool aged children each year, but they are not all eventually classified as requiring services. (2T56:19-22; 2T57:15-16). Some classified preschool children go to the Lakewood Early Childhood Center or the STARS program, a District-run program run with Individuals with Disabilities Education Act (“IDEA”) funding, and some reject placements and decide to enroll in the non-public schools. (2T59:22-25; 2T60:19-23). The CST evaluates children and, in consultation with parents, makes a determination on what placement is best for an individual child. (2T51:24-25; 2T52:1; 2T79:14-16). Any student being sent to an out-of-district placement is counted in the District’s public-school enrollment for purposes of state aid. (2T79:16-25; 2T80:1). For the 2016-2017 school year, Ms. Winters stated that the District paid \$32 million in tuition costs for approximately 400 public school students sent to out-of-district placements for their education. (2T45:24-25; 2T46:1-24; 2T47:6-7; 2T48:17-20).

Ms. Winters asserted that her role with regard to the budget is to provide educational input rather than financial input. (2T20:13-16). In response to an inquiry as to what having some educational input means, she replied, “So that the programs [that] are needed in the district are put into the budget, what teachers need, what educational programs are needed, what are needed for students.” (2T21:2-5). Ms. Winters acknowledged that all districts must certify each year that its budget provides T&E. (2T84:10-20).

For the past three years, Lakewood has received a loan from the Department through a state aid advance to make up for any deficits in the budget, amounting to \$4.5 million for the 2015-2016 school year and \$5.6 million for the 2016-2017 school year. (2T25:3-9). For the 2017-2018 school year, the District requested \$10 million in a state aid advance loan and received \$8.5 million and a \$1.5 million deferment of any payments owed, for a total of \$10 million in assistance. (2T82:15-25). The most recent state aid advance helped restore prior budget cuts across the board, other than athletics. (2T83:14-20). Ms. Winters testified that the Township gave the District funds to restore the athletic program, though more than half of the approximately \$1.1 million in Township funds went to non-public services, rather than to the public-school students. (2T81:7-23).

Ms. Winters describes the biggest challenges to the District as having its teachers resign because they expect a Reduction in Force (“RIF”), and being able to hire teachers due to the District providing a lower salary than other districts in the county. (2T67:20-25; 2T68:1-2). After the State financially assisted the District for the 2017-2018 academic year, the 140 RIF letters previously sent out were rescinded and the teachers rehired. (2T24:13-24; 2T83:1-6). Unfortunately, 78 teachers, including tenured and non-tenured, left the District prior to the 2017-2018 school year; however, Lakewood was able to replace them with teachers who, on average,

had approximately 4-5 years of experience in the classroom prior to coming to the District. (2T68: 23-34; 2T89:3-9). Lakewood spends a good deal of money on professional development in order to train its staff well, and other districts that have hired teachers from Lakewood have commended Ms. Winters for how well her teachers are trained. (2T68:12-18). Despite this level of experience in new hires, Ms. Winters feels that the students having first-year teachers, as well as the lack of stability created by teacher turnover, is a problem. (2T69:12-15).

Despite teacher turnover, test scores in the District, though below state average, have improved steadily, but Ms. Winters was quick to add that it was not the “progress they want to see in the District.” (2T69:21-23; 2T70:20; 2T91:21-25). Lakewood is attempting to aggressively raise its PARCC scores, keeping the high school library open after school three days a week for student use and providing extra help for students through remedial intervention. (2T99:15-24). Further, the District has met all of its growth targets, but for absenteeism, under the Federal Every Student Succeeds Act (“ESSA”), the successor to No Child Left Behind. (2T92:8-25; 2T93:1-9). No school in the District needs comprehensive or target support under ESSA. (2T94:1-9).

The parties stipulated that Lakewood offers all courses necessary to comply with the State graduation requirements. (2T96:5-25; 2T97:8-9). Lakewood also offers its high school students the opportunity to take multiple Advanced Placement (“AP”) classes across subjects. (2T100:4-17). Ms. Winters helped develop an innovative program at the high school, Career Academies, to divide students into learning cohorts based on their interests and further testified that the District starts supporting Career Academies in the Middle School by offering instruction in areas such as robotics, coding, journalism and horticulture. (2T97:24-25; 2T98:1-24).

Lakewood Middle School has a new technology classroom to support these classes that is equipped with robotics, 3D printers, Apple T.V., and a Mac Air Cart. (2T99:1-14).

Students may also attend the Ocean County Vocational Technical School through a shared program with the goal of preparing students to enter into a trade after graduation. (2T100:19-25). Some vocational programs are also available at the high school such as graphics design, fashion and apparel, photography and film, video technology, business data entry and Army Junior ROTC. (2T101:1-25; 2T103:1-21). Though below state average, the high school graduation rate has improved steadily since Ms. Winters became Superintendent (2T112:10-15; 2T115:17-19).

Elementary school students are provided with classes on both computer and library skills. (2T105:5-16). Letter Land, a district-wide phonics and phonemic awareness program, is also in place to assist all students in kindergarten through second grade. (2T97:21-23). Art and music classes are available to the District's students at every grade level. (2T105:17-25). Free instrumental lessons are available to students during school hours starting in fourth grade. (2T106:13-18). Students are also exposed to and able to participate in multiple musical ensembles such as chorus, band, and orchestra. (2T106:1-12).

Testimony of Malka Spitz-Stein

Malka Spitz-Stein is the Supervisor of Science Technology Engineering and Math ("STEM"), and the Supervisor of Chapter 192, 193 grants, in Lakewood. (3T132:16-17). She has been the Supervisor of STEM in Lakewood since September 2011. (3T133:3; 3T156:15). Her role as the Supervisor of STEM is to "ensure that every teacher . . . has a high-quality curriculum," and that the STEM curriculum is implemented correctly in the classroom through professional development and classroom observations. (3T133:5-13; 3T176:25-177:6).

In her role as the Supervisor of STEM, Ms. Spitz-Stein oversees the District-wide implementation of the New Jersey Student Learning Standards (“SLS”) in Math and Science. (3T189:20-25; 3T190:17-25). In that vein, she has assisted with the development of the District’s K-12 curriculum in both Math and Science (3T190:2-4; 3T191:1-3), and has ensured that those curricula are consistent with the SLS (3T182:14-18; 3T190:1-13; 3T191:1-6). Ms. Spitz-Stein testified that the curricula she helped developed, which are consistent with the SLS, are being implemented in the District. (3T191:7-10).

As the Supervisor of STEM, Ms. Spitz-Stein is also involved in hiring decisions and the evaluation of teachers in the Math and Science Departments. (3T149:9-15). She testified that there has been some teacher instability in the District for the past few years. (3T141:22-23). This is evidenced by the fact that there are currently three new teachers in the Lakewood High School Math Department (3T141:11-17), and that, she believes, only 4 out of 13 teachers in the Lakewood High School Math Department currently have tenure (3T136:15-137:2). According to Ms. Spitz-Stein, teachers who are non-tenured are “very often probably only first or second year teachers” who likely “need a lot of training,” (3T138:3-10), while, in her opinion, teachers who have been in the District for between four and five years need less oversight (3T150:22-151:2). However, Ms. Spitz-Stein also recognized that every teacher hired by the District is certified to teach by the Department (3T191:21-24) and that a teacher new to Lakewood could have prior experience in another school district (3T191:25-192:3).

Further, while Ms. Spitz-Stein expressed her opinion⁸ that “more experienced teachers are better” (3T135:20-21), she also recognized that just because a teacher is inexperienced does not mean that the teacher is ineffective. (3T192:8-11). As Ms. Spitz-Stein

⁸ Ms. Spitz-Stein was called as a fact witness and was not qualified as an expert.

explained, the District is required, pursuant to the Teacher Effectiveness and Accountability for the Children of New Jersey Act (“TEACHNJ Act”),⁹ to rate teachers as ineffective, partially effective, effective, or highly effective every school-year. (3T193:9-21). A tenured teacher is a teacher who has been rated effective or highly effective for four years. (3T135:16-18). Ms. Spitz-Stein had no basis to dispute that, in the 2015-2016 school year, Lakewood rated only 2 out of 396 teachers as ineffective or partially effective (3T193:22-194:12), or that, in the 2014-2015 school year, Lakewood rated only 2 out of 304 teachers as ineffective or partially effective (3T194:13-18).

In Ms. Spitz-Stein’s view, having a low percentage of teachers with tenure can affect student test scores (3T151:23-24) because, she believes, “when you consistently put new teachers” in front of the students, “it’s unlikely that the students . . . are going to have their deficits filled and be able to . . . learn the grade level content that’s in front of them.” (3T152:11-16). According to Ms. Spitz-Stein, the District does have large class sizes in math and science. (3T157:2-4). In the middle school, “6th grade averages in the high 20’s. 7th grade the same. 7th grade has some sections that are over 30.” (3T157:20-22). The science and math classes at the high school “probably average[] around 20.” (3T157:9-15).

With regard to student achievement, Ms. Spitz-Stein is concerned that the District is performing below the State average: its goal is for proficiency for every child. At the same time, she recognized that the District is seeing improvement in its Math scores. (3T188:21-22; 3T189:12). Specifically, the District’s performance on the PARCC assessments improved from the 2015-2016 to the 2016-2017 school year. (3T194:19-195:9). In grades 3 to 5, the District is

⁹ N.J.S.A. 18A:6-117 to -129.

seeing “significant improvement” (3T188:25-189:2), while it is seeing improvement of 1 or 2 percentage points at both the middle school and high school (3T189:4-9).

In Ms. Spitz-Stein’s view, in order to bring students in the elementary school to grade level for math, the District would need to make sure that individual students’ needs are being met. (3T169:21-170:17). While the District used to have specific math interventionists--whose job it was to provide Tier 3 intervention for students below grade level--those positions were eliminated due to budget constraints.¹⁰ (3T171:5-19). However, Ms. Spitz-Stein did state that the District is able to provide Tier 2 and Tier 3 mathematics intervention through the i-Ready math computerized intervention program. (3T195:23-196:1). She stated that the District has found i-Ready to be a reliable program, especially as the number of students proficient on i-Ready very closely matched the number of students who were proficient on PARCC. (3T197:3-7).

Beyond Math and Science, Lakewood offers a computer class for all students starting in Kindergarten; a full-time engineering class at the High School; and a robotics class in the Middle School. (3T174:15-19). Outside of STEM, the District has other supervisors who are responsible for developing curriculum in the subject matters they supervise. (3T191:13-18).

Testimony of Marcy Marshall

Marcy Marshall, who has spent her entire professional career in the District, is in her fifth year as Lakewood High School’s principal, a building with approximately 84 teachers and 1200 students. (3T200:4-8, 10-25; 3T201:1-4 3T205:22-24; 3T229:1-10). She describes the high school’s demographics as approximately 85% Hispanic, with the rest being African American and a small percentage Caucasian. (3T202:12-14). Although 75% of the students come

¹⁰ While Ms. Spitz-Stein testified that this cut was due to budget constraints, she also stated that she is not involved in the creation of the District’s budget. (3T196:4-7).

from non-English speaking families, less than 15% are poor English speakers. (3T238:6-11). The high school graduation rate was 75.4% for the 2016-2017 school year and is an improvement over years past, though below the state average. (3T211:10-25). She feels that the ELL population contributes to the lower than state average graduation rate given that they “arrive [to the District] with barely any schooling.” (3T213:6-12). Ms. Marshall stated that there has been consistent growth in her students’ PARCC scores, though describes it as minimal. (3T245:10-13). She characterizes Lakewood High School as struggling and explains she feels this way based on language barriers, attendance rates, and test scores. (3T240:12-19).

Ms. Marshall testified that the high school has “a successful” athletics program and that athletics are very important to the students as they get out of high school at 1:30 p.m. and it allows them to participate in a positive environment. (3T213:22-25; 3t233:2-17). Much of the athletics were cut in the prior year’s budget; however, they were restored when the Township provided the District money to do so. (3T214:3-7; 3T215:15-16; 3T216:2-6).

When describing her staff, she estimated that approximately 35 of the 84 teachers are not tenured, and in the 2017-2018 school year, she had 9 first year teachers, 10 second year teachers, and approximately 15-20 third year teachers. (3T229:13-23). At the fourth year, teachers are tenured. (3T229:24-25). Prior to the start of the 2017-2018 academic year, approximately 14 teachers, both tenured and non-tenured, left their positions at Lakewood High School, and Ms. Marshall opined that they left for more stability and better pay. (3T230:8-20). Seventy teachers remained at the high school, and the fourteen that left were replaced. (3T247L3-13). Ms. Marshall characterized teacher retention as a problem for the high school and testified that salaries are on the lower end of the county. (3T230:24-25; 3T231:1-9). Due to teachers leaving, Ms. Marshall spends a bulk of her summers hiring and training new teachers.

(3T231: 22-25; 3T232:1-5). She characterized teachers leaving as negative for the students because the students need consistency and stability in these relationships. (3T232:9-14).

Ms. Marshall testified that there are four curriculum supervisors district-wide, including a STEM supervisor, ELA and Social Studies supervisor, ELL/ESL World Languages and guidance supervisor, and a Special Education supervisor. (3T234:5-11). When she started working at the high school, eight years prior, there were more content supervisors. (3T234:12-14). She argues that having fewer content supervisors than she would like makes it harder for her and the three other administrators at the high school to give teacher feedback on content, as opposed to instruction. (3T235:15-20). Ms. Marshall also stated that she would love to have remediation specialists, and that “any school that has struggling students would love another teacher.” (3T240:7-11).

Ms. Marshall indicated that the high school has approximately 12-13 special education teachers on staff for a special education population of approximately 80-85 students. (3T240:25; 3T241:1-9). They have resource pullout support for Math and ELA in every grade level, as well as for Science and Social Studies in 9th and 10th grades. (3T242:11-14). Lakewood High School provides in-class support for Math and ELA at every grade level and for Science and Social Studies in 9th grade. (3T242:14-17).

She testified that during the 8 years that she has been present in the high school in some capacity, it has lost some programs, specifically in-house vocational programs. (3T203:23-25; 3T204:1-15). Some of the shop programs were taken away and the rooms they occupied repurposed for administrative offices. (3T204:25; 205:1-7). That being said, the high school has certified in-house programs in culinary arts, TV production, digital photography, fashion design, business office automation, and an Army ROTC program. (3T205:8-13; 3T253:24-25; 3T254:1-

9). To support these programs, the high school is equipped with new culinary classrooms, a TV production studio, full Mac Labs, a Media Center, a Recording Arts Studio, and a Digital Photography studio. (3T256:13-24). Approximately 100-120 of the juniors and seniors (out of approximately 500) go to a shared time program at the county vocational school to receive technical education. (3T227:15-25; 228:1-3).

Ms. Marshall testified that the chronic absenteeism rate is higher than the state average and surmised this was because many of her students work at night and high school starts early in the morning. (3T208:16-22). In order to combat absenteeism and keep students interested in attending school, the high school has developed the Career Academies Program. (3T261:1-9). Students can divide into smaller cohorts based on either an interest in STEM or Business. (3T261:10-25; 3T262:1-8).

The high school offers classes to meet all of the graduation requirements and provides multiple AP offerings across many subjects, though most of the scores on AP tests are 3 and below. (3T258:11-25; 3T259:1-25; 3T260:1-25). Other offerings at the high school include Marine studies and a Horticulture program, including a new greenhouse on campus. (3T262:9-18). Multiple art and music classes are also offered. (3T262:22-23; 3T263:19-21; 3T267:6-25). According to Ms. Marshall, approximately half of the senior year students go to post-secondary schooling, though she feels many of them are not able to necessarily afford college right after high school or have to go back into the workforce after they have matriculated. (3T220-18-19; 3T226:1-5). Many of her students go to vocational programs, the military, or straight into the workforce after graduation. (3T219:21-23).

Testimony of Robert Finger

Mr. Finger testified that he has worked for Lakewood as the Interim Assistant Business Administrator (“ABA”) since October 19, 2017, and prior to that, as the Business Administrator and Board Secretary between February 2008 and November 2010. (2T139:1-9).¹¹ Although he reviewed Lakewood’s annual audits from the 2013-2014 through 2016-2017 school years, he had no firsthand knowledge of what occurred in the District during that time. (2T141:11-142:5).

Mr. Finger testified that when he left Lakewood in 2010, it had a \$5 million budget surplus. (2T140:15-142:1). But the District began to go into deficit in 2013-2014, “and they are still in a deficit. The deficit is actually a little less, I think the high point was at 6 and a half million in deficit, and now officially June of 2017, it was down to about 4.3 million in deficit . . . [for 2016-17].” (2T142:8-15; 2T140:4-6). More specifically, he testified that after the State Monitors were installed in 2014, the deficit decreased. (5T145:19-25).

Mr. Finger indicated that the District has never gone without enough funds to balance its budget, receiving an \$8.6 million state aid advance loan for the 2017-2018 academic year, and that “officially the budget for 2017/2018 is a balanced budget.” (2T143:6-8; 5T146:22-25; 5T147:1). He indicated that in creating its budget, the District first sets forth its revenues (including local revenues, tax levy, miscellaneous, and State aid from the State aid notice), and expenditures. (5T191:5-23). If expenditures are more than revenue, the difference is put on a line in the budget labeled “DOE State Advances” and that number is then requested from the State as a loan. (5T191:5-23) He estimated that the District would face a deficit of between \$17 and \$23 million for 2018-2019, not including any salary increases, or the potential repayment of state aid

¹¹ He was not employed by Lakewood between 2010 and October of 2017. (2T138:14-25).

advances.¹² (2T191:23-192:4). However, Mr. Finger testified that “[t]here’s always a way to get the [budget] numbers down.” (2T193-13).

When asked directly what he thought was the problem in the District, he acknowledged that “I’m not an expert on how the formula works,” but felt that it was a revenue problem. (2T196:21-22; 2T196:23). He identified the 2 percent levy cap on property taxes as crippling the District’s ability to increase revenue. (2T193:10-22). He acknowledged that the decision to impose this cap was a legislative one. (5T157-25-158:2). He then opined that if trends continue as they are, the District would need to “trim around the edges” of its budget every year. (2T193:20-194:2). He further acknowledged that the Lakewood Board of Education sets the school tax rate within the parameters of the two percent levy cap but did not address how it compared with other districts in the State. (5T178:2-5).

Mr. Finger acknowledged that all the families in the District pay school taxes, not just those who have children attending public schools. (2T200:8-22). He continued: “So there’s a far higher pot of money available, okay, towards putting in as the tax levy, okay, and obviously if there’s more that could come from the local side, then there’s less that comes from the state side.” (2T200:8-22). Further, voters can elect to exceed the two percent levy cap, and “go out for a separate proposal as long as it doesn’t affect T and E. And as long as it’s not a mandated expenditure.” (5T159:6-11; 5T158:10-17). He was aware that the voters of Lakewood rejected the question to exceed the levy cap to cover costs of courtesy busing. (5T159:12-18).

Mr. Finger testified extensively about how the Lakewood Student Transportation Authority (“LSTA”) operates, and its impact on the District’s budget. He acknowledged that the Commissioner must review the LSTA pilot program next year to determine whether or not it

¹² There was limited testimony on the repayment status of the loans, however it was speculative. (5T186:17-187:7; 5T187:21-188:5).

should be renewed and felt that it should be renewed. (5T151:4-25; 5T152:1-9). According to Mr. Finger, if a district cannot provide busing for a student, every school district in the state must pay aid-in-lieu in the amount of \$1,000 to the parents. (2T148:2-4). Pursuant to statute, Lakewood must pay \$1,000 for each student being bussed by the consortium. (2T148:6-10). If anything is left over after paying for mandated transportation, then that money may be used to cover the cost of courtesy busing for nonpublic students. (2T147:9-22). He further explained that the state provides aid for transportation in two ways. (2T175:5-4). The State calculates aid based on the number of mandated students transported, which is part of a district's general fund budget. (2T175:5-13). Then for non-public students, the State reimburses the district for \$290 per student of the \$1,000 aid-in-lieu amount. (2T175:14-176:8). Mr. Finger testified that the total state aid for all transportation is around \$10 million. (2T182:2-5). However, if at the end of the year, the LSTA ends up bussing more students than they had in the prior year, then the State would provide Lakewood with additional aid because aid is initially calculated in reference to the prior year's bussed student numbers. (2T179:2-15; 5T174:1-177:4).

As Interim ABA, Mr. Finger was working on tightening controls in the special education office to ensure that the District is not paying more than it should. (2T144:2-19). Mr. Finger testified that Lakewood spends a larger part of its budget than other districts on special education and transportation. (2T160:1-16; 2T160:17-20). In reaching this conclusion, he compared Lakewood's tuition and transportation expenditures to several other districts of different sizes, namely Freehold Borough, Jackson Township, Brick Township, and Toms River Regional.¹³ (2T159:14-160:16). He also drew from his own experience working in the districts of

¹³ Mr. Finger was not offered as, or qualified as, an expert witness in this matter. He testified that he drew the comparison to select other districts for a "recent budget presentation," but did not explain his rationale for selecting these particular districts as opposed to other districts, though

Teaneck and Keansburg. (2T160:1-2). Mr. Finger opined that tuition and transportation costs could range between four percent of the total budget each for tuition and transportation, to eight percent each in the districts he had considered. (2T160:1-16). For Lakewood, he estimated that tuition and transportation would make up approximately 35-38 percent of the District's budget in the upcoming year. (2T160:17-20; 2T172:1-8).

Mr. Finger arrived at his budget projections by inputting data into the District's budget projection software. (2T170:2-4). He acknowledged that safety measures, such as building bridges over Route 9 or installing more crossing guards, could be implemented in Lakewood that could reduce the number of hazardous routes and thus projected transportation costs. (5T157:1-13). He testified that in making his projections, he included the costs for transporting special education students in both the tuition and transportation categories—so he double counted these costs, in the amount of \$3,063,195. (2T183:1-19). Acknowledging this, he projected costs for special education and transportation to be approximately \$78 million for the 2017-2018 school year,¹⁴ where the total operating budget is predicted to be \$144 million. (2T183:16-24). He then conceded that the District gets state aid for special education as well. (2T184:4-15). When asked how all of the above affected the creation of a budget for public school students, he responded “I really have no answer for that. I'm not an educator.” (2T186:9-15).

noted that a few were similar in size, and one of the districts he analyzed was similar demographically in terms of its Hispanic population to Lakewood. (2T159:14-160:16, 21-14).

¹⁴ Elsewhere, he testified that the total special education and transportation costs, not counting special education twice, would be about \$88 million. (2T189:14-18).

Testimony of Dr. Danielle Farrie

Dr. Danielle Farrie is the research director at the Education Law Center (“ELC”), a non-profit legal advocacy firm that works to enforce the rights of public-school students across New Jersey and nationally. (4T5:14-20). She was qualified as an expert in educational funding. (4T15:25-16:1).

Dr. Farrie described the SFRA as a school funding formula that “looks at the unique population of each school district and determines the funding level that is required to support those students to meet the state standards.” (4T16:25-17:3). That funding level is called the “adequacy budget.” (4T17:8-9). Once the adequacy budget is determined, the formula looks at how much the local municipality can raise to support the schools (the “local fair share”). (4T17:5-7). It then takes the difference between the adequacy budget and the local fair share to determine a district’s equalization aid. (4T17:7-8 & 18-19; 4T29:8-11). Beyond equalization aid, Dr. Farrie testified at length about other categories of aid districts receive, including special education categorical aid. (4T17:24-31:22). Under the SFRA, one-third of a district’s special education costs are funded directly by the State through special education categorical aid, while the remaining two-thirds are accounted for in the district’s equalization aid. (4T18:2-10).

Dr. Farrie recognized that the New Jersey Supreme Court has declared the SFRA to be constitutional (4T56:24-57:12), and that the SFRA is “a national model of school funding” (4T81:3-5). However, she opined that the SFRA is not adequate for Lakewood because of the community’s unique demographics. (4T82:8-10; 4T57:23-58:1). Specifically, while in most districts the majority of students attend public schools, the majority of students in Lakewood attend private schools. (4T58:3-12). In Dr. Farrie’s view, those unique demographics lead to mandated transportation and special education costs that “eat[] up all other areas of the budget”

and cause Lakewood to be in a state of “constant fiscal distress.” (4T81:3-12; 4T76:14-23). According to Dr. Farrie, Lakewood’s per pupil expenditures are currently less than the average spent by other K to 12 districts with student populations above 3,500. (4T78:9-22). She also noted that, as of 2014, Lakewood’s performance on statewide assessments relative to other districts had decreased. (4T80:8-19; 4T103:7-9). However, she does not know if or how Lakewood’s relative performance has changed since 2014. (4T104:1-3).

With regard to special education, Dr. Farrie testified that Lakewood has comparatively high special education costs. (4T62:6-7). In her view, there are three factors underlying those high costs: (1) the classification rate in Lakewood is higher than the State average because students in need of special education services who might otherwise attend a private school are “essentially opting into the public education system at a higher rate than their non-special ed counterparts” (4T62:8-15; 4T73:1-5); (2) Lakewood has a higher than average number of students in the highest cost disability categories (4T62:25-63:12); and (3) Lakewood places a higher than average number of students in out-of-district placements,¹⁵ and those programs are more expensive (4T64:4-17; 4T67:24-68:8). According to Dr. Farrie, these factors stress the District’s budget because the SFRA’s calculation of special education aid “is based on an expected population of an average classification rate with average disability classifications with average disability placements.” (4T74:15-23).

Dr. Farrie did recognize that students in out-of-district placements are public school students counted in the District’s enrollment numbers and thus are accounted for in the District’s special education categorical aid, equalization aid, security aid, and extraordinary aid,

¹⁵ Dr. Farrie recognized that, by definition, districts are going to be above the average classification rate of 14.92%, and so Lakewood is not unique in that regard. (4T94:23-95:9; 4T113:13-17). When asked if there are any other districts that would be considered an “outlier,” as opposed to just above average, Dr. Farrie was not sure. (4T114:3-5).

if appropriate. (4T93:11-94:11). She acknowledged that Lakewood does receive extraordinary aid for special education students who have expenditures over \$40,000 for in-district placements and over \$55,000 for out-of-district placements. (4T87:19-88:17; 4T89:21-25).

With regard to transportation, the District must, pursuant to statute, provide mandated transportation for both public and non-public students. (4T75:11-12). According to Dr. Farrie, Lakewood's transportation costs are an issue because they "far exceed even a fully funded SFRA." (4T75:24).

Dr. Farrie noted that the District is spending "somewhere around \$40 million in excess of what the formula provides for both special education and transportation." (5T86:3-7). She therefore believes that there must be a change in the funding structure and the way aid is allocated to Lakewood that takes into account Lakewood's unique demographics. (4T81:23-25; 4T82:1-7).

Testimony of David Shafter

David Shafter has been a State Monitor in Lakewood for the past three years, installed by the Department due to the deficit in the school budget. (5T5:21-25; 5T6:1-10:24; 5T8:17-23). He has a bachelor's degree in Business Education from Temple University, and a Master's in Science in Accounting from Penn State University. (5T7:2-4). Further, he is a Certified Public Accountant, Certified School Business Administrator, and a Qualified Purchasing Agent. (5T7:4-6). Prior to coming to Lakewood, he served as a Business Administrator in Camden City, East Windsor and Willingboro, as well as a State Monitor in Willingboro, Beverly and Camden City. (5T7:9-25; 5T8:2-8).

As a State Monitor, he is "intimately involved . . . in the finances of the School District" and has approved two budgets that the Lakewood Board of Education would not

approve for the 2016-2017 and 2017-2018 school years. (5T10:1-6; 5T22:6-9; 5T22:20-24). At the time Mr. Shafter was installed in Lakewood “there was a big problem with the financial records.” (5T21:5-7). He estimated that when he first came in the financial records were approximately 50% accurate. (5T73:13-18). Additionally, the Comprehensive Annual Financial Report (“CAFR”) that the District was required to file each year had a significantly high number of findings. (5T74:11-25; 5T75:1-11). According to Mr. Shafter, “the number of findings usually reflects the—the abilities of the business office to properly run the dis—the finance of the district.” (5T75:4-6). There were no purchase orders in place for students the District had determined to send to out of district placements and therefore “there was no way of knowing how much was being spent.” (5T31:8-13). By not having purchase orders, “students may have moved out of the District, but there was no reduction in the purchases order for the private school of the handicapped.” (5T13-15).

According to Mr. Shafter, the District was additionally not keeping an accurate position control roster showing the names of staff, what they did, and what accounts they were charged to. (5T72:8-13). There were also in-district students for whom the District was not applying for extraordinary aid, meaning that additional revenue was not being collected. (5T77:1-9). Mr. Shafter testified that “there was no way of knowing what was going on” and “when you would look at the financial records, you really couldn’t believe whether they were accurate or not.” (5T31:16-21). Inaccurate or unreliable financial records would affect the District’s ability not only to track its finances, but also to plan for future expenditures. (5T73:20-25; 5T74:1-2). Part of his job was to correct financial practices and he believes they are currently corrected. (5T32:1-3). The number of findings reported in the CAFR have gone down since Mr. Shafter’s installation in Lakewood as a State Monitor. (5T75:12-25).

The first Lakewood budget with which Mr. Shafter was involved in was for the 2015-2016 academic year. (5T11:1-3). In October or November of 2015, he and the lead State Monitor, Michael Azzara, had determined there would not be sufficient funds to continue to pay for non-public student courtesy bussing for the entire year. (5T11:10-23). A referendum was put to the Township to assist in paying for the courtesy bussing and the referendum “was resoundingly defeated.” (5T11:23-25; 5T12:1). Due to the referendum failing, courtesy bussing was going to stop on or around February 1, 2016, but the Commissioner, feeling that it was too dangerous¹⁶ to just stop the bussing, directed Lakewood to continue courtesy bussing and provided a \$4.5 million advance in State Aid, essentially a loan, to the District to pay for it. (5T12:9-17; 5T13:3-5, 9-13).

For the 2016-2017 budget, the Department once again issued Lakewood a state aid advance, this time of approximately \$5.4 million. (5T15:16-25; 5T16:1-3). Mr. Shafter commented that had the Department not stepped in and provided Lakewood the loan, teachers would have been laid off and class sizes would have increased. (5T16:6-9). Mr. Shafter attributed the deficit in the 2016-2017 budget to increases in the costs of programs coupled with state aid being “substantially frozen” and tax increases limited to two percent by statute. (5T16:18-22; 5T83:21-24). Any tax increases above the two percent levy cap would have to be approved by the community via special question.¹⁷ (5T81:8-11).

Mr. Shafter went on to explain that the LSTA was created by the Legislature, and, he believes, with the support of the community, to provide the non-public students residing in the District with bussing. (5T78:18-25; 5T79:1-4; 5T83:25; 5T84:1-2). “[T]ransportation costs

¹⁶ Mr. Shafter indicated that the Township could add sidewalks or have more crossing guards in order to reduce the number of hazardous routes. (5T88:18-21).

¹⁷ See N.J.S.A. 18A:7F-39(c).

increased because the District was responsible to give the LSTA \$884 a student.” (5T16:24-25; 5T17:1-2; 5T79:22-25; 5T80:1-8). Although the State reimbursed the District the difference between \$730 and \$884, at the time, it was costing less than that amount per student for the contracted transportation. (5T17:2-7). Increased numbers of non-public students mandated to be bussed pursuant to statute also increased costs to the District. (5T80:13-15).

The LSTA, along with the increased number of students sent to private schools for the handicapped, teacher pay raises, and health insurance increases, equaled more than what the increase in State Aid and local taxes could handle. (5T17:7-16). Mr. Shafter characterized the 2016-2017 budget as being “cut down as low as possible” and therefore, the State issued the advanced State Aid to make up for the shortfall. (5T19:3-8).

In March 2017, as the 2017-2018 budget was being developed, there was once again a deficit of approximately \$13 million. (5T24:10-15). Lakewood’s Superintendent and Mr. Shafter would not recommend the budget with such a deficit and the kinds of cuts that would entail. (5T24:21-25; 5T25:1-15). The State issued another state aid advance of approximately \$8.5 million and allowed the District to waive a year of loan and audit paybacks (approximately \$2 million). (5T25:21-25; 5T25:1-2). Although cuts to athletics and non-public related services remained, Mr. Shafter characterized the 2017-2018 budget after the loan as “sufficient [sic] to deliver the services to the students.” (5T26:12-21).

Mr. Shafter testified that he believed there are “insufficient revenues to cover the required expenditures,” and further explained that that is “why we [the District] have advanced State aid” from the Department to cover any shortfall. (5T33:4-9). He testified that the monitors have cut what they could and have both initiated cost savings measures such as in-house transportation for public school students, bus schedule tiering, and hiring of teachers in order to

open in-house special education classrooms. (5T18:14-20; 5T20:3-25; 5T34:2-12; 5T37:1-5). He further noted that the financial problem in Lakewood is a combination of “the non-public population has been increasing about ten percent a year,” increasing transportation costs to the District, categorical aid and equalization aid being frozen, and the inability to raise taxes more than two percent each year. (5T39:4-6; 18-20; 5T41:24-25; 5T42:1-7). Mr. Shafter acknowledged that the amount of categorical aid and equalization aid a district receives is a legislative determination, set by the appropriations act annually. (5T83:8-20). The restrictions on the taxation cap is also a legislative decision. (5T83:21-24).

Mr. Shafter, when asked, stated that he believes the solution for Lakewood is increased revenue, through either increased State aid or increases in local taxes. (5T91:25; 5T92:1-6). He also believes the Township to have a surplus in its budget. (5T92:10-12). While the Township is not required to use the money on the school system, he indicated that it could be used to fund the schools. (5T92:13-15). Hypothetically, he noted that increases in revenue could happen by obtaining full funding for all districts statewide, or coming up with a completely new funding formula, again applicable to all districts. (5T93:2-7). Both of these fixes would have to come directly from the Legislature. (5T100:1-10).

Testimony of Mike Azzara

Since May 2014, Mr. Azzara has been the Lead State Monitor in Lakewood, overseeing the District’s finances and business operations. (5T106:4-9; 5T139:11). He testified that, while there is “an overall fund deficit” in Lakewood this year, there is no deficit in the operating budget. (5T112:22-25).

With regard to Lakewood's finances, Mr. Azzara testified to his opinions¹⁸ that Lakewood has "a revenue problem" and does not have "a spending problem." (5T107:17-20). In explaining those opinions, Mr. Azzara stated:

Well, I've been there for four years. So, we've done everything we can to try to balance the budget. And we're pretty much down to what we, you know, just what we need to meet T and E and get the Superintendent and the County Superintendent to sign off on the budget and certify that it's adequate.

[5T107:25-108:5.]

More concisely, Mr. Azzara stated his belief that, while the District "could always look for more economies" (5T109:8-10), they have made "every reduction that's possible in order to maintain a T and E education" (5T108:22-25).

Mr. Azzara largely attributed Lakewood's budgetary issues to the approximately 30,000 children in the municipality attending non-public schools, who are entitled to transportation and certain special education services from the District. (5T120:24-121:6). He also expressed his opinion that such a large non-public school population strains the taxpayers because they have to support other municipal services, such as police, firefighters, and trash removal. (5T123:13-22). Mr. Azzara recognized that Lakewood does "have a big tax base" (5T133:2-3) that "is spread out over many more people than the people who send their children to the public school" (5T132:5-7).

While stating his opinion that Lakewood "need[s] more revenue" (5T129:21-23), Mr. Azzara recognized: "If that comes from the taxpayers or it comes from the State, that's really a question for the legislature and the courts, not me" (5T129:23-25). In Mr. Azzara's words: "[T]he legislature could make any decision it wanted in terms of how to raise the additional

¹⁸ Mr. Azzara testified as a fact witness and was not qualified as an expert.

money.” (5T130:5-7). One difficulty the District faces in raising revenue is that it is “tapped for its property tax. And it can’t raise any more than it does. It goes to cap.” (5T130:2-4). As Mr. Azzara explained, in order to allow taxes to be increased in Lakewood, the Legislature would have to remove or revise the property tax cap because the levy cap is a legislative decision. (5T130:10-13; 5T136:6-8). Without such action by the Legislature, “only the local voter can raise taxes above the cap.” (5T130:18).

Beyond that, while “any increase in the adequacy budget would be totally funded by State aid” (5T126:20-127:6), a District’s equalization aid that is appropriated is a legislative decision (5T135:22-25). For the amount of equalization aid appropriated to be changed, that would have to be done by the legislature, or, according to Mr. Azzara, the Supreme Court. (5T136:9-11). According to Mr. Azzara, if the overall budget of the State remains the same, in order for Lakewood to receive more equalization aid, “[t]hat money would have to come from other districts.” (5T139:24-25; 5T140:21-25). That is because “the multipliers are basically the product of how much State aid is appropriated by the legislature.” (5T140:7-9).

Finally, Mr. Azzara recognized that certain mandatory expenditures may only be changed by the Legislature. (5T109:1-17). As Mr. Azzara explained, many special education expenses are “all pretty much governed by law” (5T109:13016) and, with regard to transportation, the District is required by statute to pay \$1,000 for every pupil it is mandated to transport to a statutorily-created non-public consortium. (5T109:2-4).

Testimony of Melvin Wyns

As their final witness, Petitioners presented the testimony of Melvin Wyns, a retired education consultant, called to offer testimony as an expert in school funding. (6T7;

6T11). Mr. Wyns testified that the Department was doing everything in its power to assist Lakewood. (6T38-6T39).

Prior to opening his consulting firm, Mr. Wyns worked in the Department's Office of Finance for 31 years. (6T7). He also worked for the Trenton Board of Education as a Business Administrator for four years. (6T7). For his final thirteen years at the Department, Mr. Wyns was the Director of the Office of School Finance, responsible for administering the State's school aid programs under funding statutes pre-dating the SFRA. (6T7-8).

Mr. Wyns has been retained as a consultant by school districts and municipalities to provide guidance on school funding issues. (6T9). He has also testified on behalf of the Education Law Center in court proceedings, including the Abbott XX and Abbott XXI proceedings.¹⁹ (6T9).

From January through June of 2018, Mr. Wyns was a paid consultant of the District, but started becoming familiar with the District's funding in 2003, when he was also a paid District consultant. (6T12-6T13). In total, Mr. Wyns was under contract with the District for 6-8 years between 2003 and 2018. (6T12-6T14).²⁰

Mr. Wyns opined that the SFRA is not working in Lakewood, but noted that the Department had fortuitously intervened to ensure that the District could provide its students with T&E. (6T21-6T22). He testified that the District has increasing shortfalls, and that the problem, which can only be legislatively fixed, is worsening. (6T27; 6T38). He testified that the Department is doing everything it can to help Lakewood. (6T38-6T39).

¹⁹ Abbott v. Burke, 109 N.J. 140 (2009) (Abbott XX) and Abbott v. Burke, 206 N.J. 332 (2011). (Abbott XXI)

²⁰ Mr. Wyns was not under contract with Lakewood at the time of his testimony. (6T14).

Upon being asked by the Court how he would alter the formula, Mr. Wyns suggested counting nonpublic students in the calculation of special education funding and changing the wealth calculation so as to increase equalization aid to the district. (6T42-44).

Testimony of Kevin Dehmer

On July 9, 2019, Respondents presented the testimony of Kevin Dehmer, Assistant Commissioner of Education for Finance. (8T6-8T161). His testimony clarified the breadth of revenue Lakewood receives from all sources, and the manner various forms of State aid are calculated as detailed in annual state aid notices. See, e.g., (R-1; R-2). He also testified as to the extremely large proportion of certain non-SFRA revenue that Lakewood receives as compared to the rest of the state. See, e.g., (R-3; R-5; R-7). Mr. Dehmer also testified as to the relatively low tax rate that Lakewood has seen over the years, and how increases in taxes are capped. See, e.g., R-14. Finally, he explained that Lakewood each year runs into the problem of having an unbalanced budget, which can be attributed to a litany of problems rather than to one cause. (8T120).

Mr. Dehmer has a bachelor's degree in economics and political science, and a master's degree in public policy. (8T7). He has been the Assistant Commissioner for the Division of Finance two and one-half years and has worked at the Department since he was in graduate school in 2007, rising steadily in title and responsibility over his time at the Department. (8T7-8). In his current role, Mr. Dehmer is responsible for overseeing the financial concerns within the Department, including, but not limited to school facilities, planning, grants, State monitors, information technology, nonpublic schools, school choice, and fiscal policy and planning. (8T8-8T9).

Mr. Dehmer has worked with the SFRA since its inception. (8T9). He described the formula as taking into account student enrollment, and the characteristics of student populations in a district. (8T10). The calculations involved in the formula determine an "adequacy budget," which is an estimate of the cost of educating the schoolchildren in a given district. (8T10). There are districts that spend above their adequacy budgets, and some that spend below their adequacy budget amounts. (8T25). "Adequacy" is not a term that carries a judgment regarding whether the particular amount is necessary for a constitutional education; it is merely the name given the calculated figure under the SFRA. (8T25).

The adequacy budget is split into two amounts: a State component, equalization aid, and a local component, local fair share. (8T10). The adequacy budget is calculated by taking a district's reported public-school enrollment, and multiplying it by certain weighted factors based upon the population demographics in the district. (8T10).

The state aid component of the adequacy budget is called equalization aid, which is essentially the difference between a district's adequacy budget and its local fair share. (8T12). The local fair share takes into account a district's equalized property valuation, a measure of property value and income. (8T11). The local fair share represents a community's ability to financially support the school system. (8T11).

Local share revenue comes from a district's local tax levy. (8T28). There is a statutory cap on how much the tax levy can grow year over year; however, there are exceptions to the cap limit, including increases in healthcare costs. (8T29). A district may also carry forward unused capital as "banked cap," but Lakewood has exhausted all of its banked cap. (8T29). Municipalities may also vote to raise additional money to support the schools. (8T30-8T31).

Mr. Dehmer testified that the adequacy budget, along with other types of aid, is detailed in state aid notices issued by the Department to the various districts. His office publishes State Aid Notices for each district annually based upon the governor's annual proposed budget and is a detailed outline of a district's funding according to the SFRA. (8T14-8T15). The most-recently available data upon which the calculations are based is collected from various state agencies such as Community Affairs, Treasury, the Department, and others. (8T27).

The Department is required to produce notices within two days of the Governor's Annual Budget Address, and they are then sent out to each respective district via an electronic portal. Lakewood's 2018 state aid notice was dated March 15, 2018. (8T16; R-1). The notices produced in March are modified by the State's annual Appropriations Act. (8T17) Mr. Dehmer testified that the revised notice takes into account all of the changes to a district's funding that occurred during the appropriations process. (8T18). Lakewood's revised notice for 2018 was published on July 13, 2018. (8T18; R-2).

Mr. Dehmer testified to Lakewood's 2018 adequacy budget as shown in the state aid notices. (8T21). The formula's enrollment figure does not include students enrolled in private schools.²¹ (8T21-22). Funding sources are given certain weight modifiers based upon population characteristics. (8T23). For example, the base amount of aid for students considers elementary school students, and there is additional weight, and therefore additional money, given for students in middle school or high school, because those students are more expensive to educate. (8T23). The same principle applies to students who are economically disadvantaged, or are non-English speakers. (8T23-8T24).

²¹ Non-public students are included in the transportation categorical aid calculation. (8T21-22).

Categorical aid, which is state aid separate from the adequacy budget, is also shown on state aid notices. There are various types of categorical aid provided to districts including that for transportation, special education costs, both regular and extraordinary, and security aid. (8T12; 8T31-37).

Transportation aid is paid as categorical aid. Districts receive transportation aid for all regular education students who are required to receive transportation, including non-public students, and for all special education students who receive regular transportation. (8T31-8T32). Districts also receive funding for special education students whose IEPs require special transportation. (8T32).

Two thirds of special education funding is paid as equalization aid, contained within the adequacy budget, and one-third is categorial aid, which does not take into account a district's wealth. (8T12). Special education funding is based upon a state-wide classification rate of 14.92%. (8T34).

Extraordinary Special Education Aid (ExAid), is provided as a reimbursement to districts based upon the actual cost of educating certain students based upon their placements. (8T37). It is outside of the general calculations, but is provided as a partial reimbursement of costs incurred over a statutory threshold. (8T37).

Finally, there is security aid, which is paid based upon the number of students in the district, and the number of at-risk students in the district. (8T12). The calculations for the categorical aid are all set forth in statute. (8T12). Security aid is a flat, per-pupil rate of funding, and is modified based upon the concentration of low-income students in the district. (8T35).

Districts receive funding for all mandated-transportation students regardless of whether they attend the district or not. (8T35-8T36). However, districts receive no special

education or security aid for students not enrolled as public-school students in the district. (8T36). A student is counted as "enrolled" based upon their status on the business day preceding October 16 each year. (8T36).

During the course of the litigation Mr. Dehmer asked his staff to compile certain data. (8T39). This was used to create some charts that were ultimately entered into evidence; compiled from publicly-available data maintained by the Department from district reports. (8T41). The charts show various financial trends and demonstrate a financial history of Lakewood over the recent past. The following charts were entered into evidence and testified to by Mr. Dehmer.

In Exhibit R-3, Department staff compiled data regarding the history of Lakewood's local tax levy. (8T39; R-3). R-3 demonstrates that the District's tax levy, remained flat and only began to increase starting in Fiscal Year (FY) 2015, which is the year that the State installed a monitor in Lakewood. (8T45).

Exhibit R-5 represents a history of extraordinary aid received by Lakewood. (8T39; R-5). It sets forth Lakewood's percentage of total extraordinary aid paid in state. (8T48; R-5). For example, in FY2017, Lakewood received 2.33% of all extraordinary aid in the state despite their enrollment accounting for less than 0.5% of the state's total enrollment. (8T48-8T49; R-5).

Exhibit R-7 represents the amounts of certain forms of nonpublic aid under Chapter 192 and 193 that Lakewood received over the delineated years. (8T40; R-7). Lakewood received over 30% of all 192/193 nonpublic aid disbursed in the state. (8T42; R-7).

Exhibit R-8 is a chart demonstrating the amount of other nonpublic aid Lakewood received. (8T50; R-8). In particular R-8 shows that, of the aid described in the chart, Lakewood

received over 20% of the state's total disbursed aid. (8T51; R-8). There are 577 operating school districts in the state and one district, Lakewood, receives over one-fifth of all non-192/193 nonpublic aid in the state. (8T52).

Exhibit R-9 demonstrates various categories of aid provided to Lakewood by the State over a period of three years, none of which needs to be repaid. (8T53-55; R-9).

Exhibit R-10 shows the equalized property valuation in Lakewood over the years. (8T55; R-10). Generally, the property values in Lakewood dipped during the national recession and then have risen steadily since 2015. (8T55-8T56; R10).²²

Exhibit R-13 demonstrates a comparison between the local levy and the local fair share in Lakewood over a matter of years. (8T57).

Exhibit R-14 compares tax rates for districts with comparable enrollment figures to Lakewood. (8T59; R-14). As depicted in the chart, Lakewood is taxing below the state average. Ibid.

Finally, the Court asked Mr. Dehmer to clarify how the Commissioner determines how much money is necessary to advance a district in need. (8T98-8T99). He explained that it is a process of communicating with the district and the state monitor, examining the numbers, and consulting with other staff. (8T99). The exact amount is determined based upon the need to balance the budget, essentially, ensuring that the revenues and the expenditures are balanced. (8T100). The Commissioner is required to certify his request for a certain amount of advanced state aid to the State Treasurer, which is not determined based upon formula, but rather is based upon all evidence and information before the commissioner, so as to ensure the continued provision of a thorough and efficient education. (8T102-8T104).

²² There was a calculation error in R-10 that led it to be admitted subject to an edit. (8T69).

Testimony of Christopher Soleau

Christopher Soleau is a principal auditor for the Office of Legislative Services, Office of the State Auditor, and acted as a principal auditor for the 2014 audit of the District. (9T16:6-22; 9T17:7-8). He was present on-site at the school district from approximately January 2013 through June 2014, reviewing records from July 1, 2011 through December 31, 2013. *Ibid.* Respondents called Mr. Soleau to testify to his audit of the District, including auditing procedures in general and the numerous findings as result of the Lakewood audit, specifically. Mr. Soleau has been with the Office of State Auditor for approximately 18 years. (9T14:3-6, 23). The Office of State Auditor audits various state agencies and programs that are funded by the State of New Jersey in order to improve accountability of public funds and improve operations of government. (9T:15:18-23). A principal auditor is a field supervisor, who is present on site of an audit with a team of auditors. (9T14:8-14).

In general, Mr. Soleau explained, an audit consists of three phases: a planning phase, a testing phase and a reporting phase. (9T17:13-15). During a planning phase, the audit team would meet with key personnel, review relevant laws and regulations and review data. (9T17:17-22). During a testing phase, the audit team would review supporting documentation for transactions and verify processes and controls. (9T17:24-25; 9T18:1-2). Finally, a reporting phase is where the audit teams compiles all of the “audit evidence” and comes up with findings and a draft report. (9T18:4-6). This was the methodology Soleau used with his team when he audited the District. (9T18:10-12). An audit report regarding the District was compiled by his team and issued in August 2014. (9T19:4-12; R-15).

The audit’s objectives “were to determine whether financial transactions were related to the school districts programs were reasonable and were recorded properly in the

accounting system.” (9T22:8-14; R-15). Mr. Soleau testified that he found some unreasonable transactions and some that were not properly recorded. (9T22:17-19). He explained that it is important for transactions to be properly recorded to provide transparency and accountability for funds spent by the District. (9T23:2-4). As a result of the audit, Mr. Soleau and his team had to refer certain issues to the New Jersey Division of Criminal Justice as potential fraud by auditing standards and State statute. (9T23:25; 9T24:1-7).

During the team’s field work, Lakewood had a projected budgetary deficit of \$5,000,000 for the end of the fiscal year. (9T23:13-18). Mr. Soleau stated that causes for this projected deficit included increases in student transportation costs for both public and non-public schools, increases in special education tuition, poor purchasing procedures, salary allocations, leaves of absences, legal costs, extra compensation, final leave balance payments and salary increases. (9T24:19-125; 9T25:1-18; R-15). Also troubling was an unstable administration, most notably in the key areas of superintendent and business administrator. (9T26:8-25; R-15).

Mr. Soleau specifically noted concerns regarding the general fund revenue generated from the local property levy. (9T27:9-10; R-15). He reported that the local property tax levy increased just 0.3 percent per year between fiscal years 2009 and 2013. (9T27:8-15). He felt that “keeping property taxes flat was something that could maybe affect the budget and the deficit.” (9T27:17-19). This stagnant levy stood out because in seeing growth in the non-public school population, he expected there to be added costs, and did not see the District increasing local revenue sources to accommodate that. (9T27:20-24; R-15).

The auditors reviewed multiple state and federal grant programs as part of their audit of the District. (9T28:13-14; R-15). First, the audit team looked at federal funds, specifically Title One funds. (R-15). He noted that there were questionable reconciliation

procedures—in essence it was important to reconcile systems in order to show how much was spent and how much was available for spending. (9T29:20-22). If spending was not properly tracked, there was a risk of funds being reverted back to the federal government. (9T29:23-25). The District’s accounting system for Title One funding and the reports were not reconciled. (9T30:1-15; R-15). A further determination was made that a Title One waiver was not used properly as a school principal was paid using Title One funds, and that was not a position that should be paid with such funds. (9T31:16-19; R-15). Mr. Soleau found supporting documentation with regard to the District’s Title One expenditures questionable. (9T32:5-16; R-15).

Mr. Soleau’s team also reviewed the District’s use of IDEA funds: the District spent \$4,834,700 of IDEA funds on the non-public schools for the 2012-2013 school year, despite only having a \$4,809,692 allocation of IDEA funds to spend on the non-public schools. (9T33:14-19; R-15). The District spent over their IDEA allocation on the non-public schools. (9T33:20-22). The team also noted that some IDEA expenditures were being paid out of the general fund, instead of from IDEA monies, and therefore would have added to the District’s programming fund deficit. (9T33:23-25; 9T34:1-2; R-15).²³ Ultimately, the team found that “the total additional general fund amount spent for non-public school IDEA expenditures during the 12/13 school year was at least one million dollars.” (9T34:15-19; R-15).

The audit team also reviewed some expenses involved with a program called the Supplemental Resource Center Program, which involved instruction in basic reading and math in small group settings. (9T34:20-25; 9T35:2-4; R-15). The District paid a lump sum of \$60,000 per class regardless of the size of the class, and despite entering into a contract specifying

²³ The general fund is a district’s general operating fund. (9T34:4).

minimum enrollment for the class, the team found classes below that level. (9T35:7-22; R-15). The District had to spend the \$60,000 for each class regardless of the size. (9T35:21-22).

Concerns were also raised regarding service plans for non-public students and leases entered into for early childhood programs. The District was paying for utility costs that fell outside of the period of the lease. (9T37:10-12; R-15).

The team looked at another major source of state funding for non-public school students; Chapter 192 and 193. (R-15). Chapter 192 funds provide auxiliary services such as compensatory education, English as a Second Language, and home instruction whereby Chapter 193 funds provide remedial services such as speech language services and determinations for eligibility. (9T37:23-25; 9T38:1-4; R-15). Here for example, the team found consultants paid out of a dedicated compensatory education fund that were not providing compensatory education services. (9T38:22-24; R-15). They found vendors that were paid over state-allocated rates. (9T39:9-16; R-15). They also found a vendor that was allegedly providing home instruction at the very same time she was scheduled to provide Chapter 192 services in a non-public school. (9T39:25; 9T40:1-7; R-15). In attempting to visit schools where some of this money was being spent, they found students missing from scheduled classes and in another instance, were turned away from a school and told no services would be taking place when instead 34 classes were scheduled. (9T41:1-25; 9T42:1-25; 9T43:1-3; R-15).

Mr. Soleau also reviewed lease agreements for facilities to provide Chapter 192 and 193 services. (R-15). He testified that he found facilities that the District contracted with to provide Chapter 192 and 193 services within the non-public schools; however, he also found a letter from the Department indicating that this was a non-allowable cost. (9T46:1-8; R-15). Although he found a series of emails between former board counsel and an employee of the

Department regarding the potential allowance of these expenditures, the team felt the best evidence was official guidance issued by the Department. (9T46:17-21; R-15).

Moving away from funding streams, the audit team also looked and reported on District expenses and procedures. During the audit period, legal costs were found to be a problem for the District. (9T44:1-24; R-15). The District's legal expenses were found to exceed 130 percent of the statewide average cost per pupil, and during fiscal year 2013, the District paid a firm a total of \$1.1 million for legal services. (9T44:12-16; R-15). Had the District used a competitive bidding process it may have saved approximately \$200,000 on these costs. (R-15). Further, based on invoices reviewed, approximately \$128,000 of legal expenses were "related to legal issues between the district and a former board attorney." (R-15).

Another area contributing to the deficit, were questionable purchasing procedures. (R-15). The team noted instances where purchase orders were generated after goods or services were received. (9T45:11-13; R-15). Mr. Soleau explained that this kind of procedure could result in the District "not having full knowledge of all the obligations that they would be required to pay," and that it could "result in overspending of the budget." (9T45:17-21).

Of major concern to the team were questionable special education tuition payments. (R-15). Mr. Soleau explained that the audit revealed special education students that the District placed in unapproved non-public schools. (9T49:7-13; R-15). The team looked at 31 of the 324 special education students that were sent out of district for the 2012/2013 school year and found that 16 of those 31 students were attending unapproved non-public schools. (9T49:14-25; 9T50:1; R-15). Based on Mr. Soleau's review of regulations, in order for the placement to be appropriate, documentation should have been present showing approval from the Commissioner of Education, a court or an administrative law judge. (9T50:5-17; R-15). The

District was unable to provide the audit team with any such documentation for any of the 16 students. (9T50:18-22; R-15). Further, the audit team could not determine how tuition costs for unapproved public schools were calculated as there was no supporting documentation found anywhere. (9T51:16-19; 9T52:2-4; R-15).

The audit also revealed improper employee related payments. (R-15). The District improperly paid out overtime payments to employees ineligible for overtime payments. (9T53:25; 9T54:1-10; R-15). The team found vouchers for payment that were approved using signature stamps, meaning that there were no controls on who was actually approving payment. (9T54:13-21; R-15). The team also found that final leave balance payments were miscalculated, leading the District to underpay and overpay its employees, though the majority were found to have been overpaid. (9T56:6-21; R-15). Salaries eligible to be paid out of a specific grant fund were instead paid out of the general fund, which created a burden on the general fund. (9T57:7-16; R-15). Also found was evidence that employees who were out on leave and required to contribute towards their healthcare were not doing so and instead the District bore the cost of the healthcare entirely, approximately \$95,000. (9T59:2-22; R-15). Finally, the team noted that there were very high salary increases for non-union employees, one employee's raise as much as a 38% increase for the same job from one year to the next. (9T57:17-25; 9T58:1-20; R-15).

Finally, the team listed observations in its report. (R-15). First, the team looked at transportation and noted "proposals of initiatives that could have saved—could have achieved cost savings." (9T60:11-23). Three of the proposed modifications to the District's transportation could have save the District, at the time, approximately \$6.7 million, \$750,000 and \$1.2 million. (9T61:5-6; R-15). The team also looked at the efficient use of IDEA funds, and

noted that multiple other districts were able to serve a greater percentage of their special education students with their IDEA funds than the District. (9T63:1-25; R-15).

Mr. Soleau testified that after a report is issued, it becomes a public document, and a district has the opportunity to respond. (9T64:5-9). Lakewood responded to the report and their responses became part of the final public document. (9T64:10-16; R-15). While the District was able to fix some of the problems identified in the audit team's report, those fixes only solved problems going forward in time. (9T64:17-21).

Testimony of Catharine Anthony

Respondents presented Catharine Anthony, who testified about research she conducted into Lakewood's practice of settling special education litigation by agreeing to pay for students to attend nonpublic schools that are not approved for out-of-district placements, and allowing those students to disenroll from the district. Ms. Anthony is a Dispute Resolution Specialist, who has worked for the Department for three years. (9T69-9T81). In her role, she is responsible for opening mediation due process requests for special education matters, transmitting cases to the OAL, closing cases when requested, and any other projects assigned to her. (9T70-9T71). Ms. Anthony testified that, during the course of a special education case its record is maintained in a hard-copy file for 20 years, and records are stored off-site. (9T71). The Department also maintains a database that tracks the status of cases, and contains all of the information that is within a due process request itself, including when it was opened and closed, if it was transmitted to the OAL, which ALJ handled the case, and its "EDS" number, among other things. (9T72-73).²⁴

²⁴ The EDS number is an identifying number assigned to a case once it arrives at the OAL (9T74).

During the course of Ms. Anthony's work her supervisor requested that she conduct some research into past special education settlements involving the District. (9T75). She was asked to compile a list of any special education settlements in which Lakewood agreed to disenroll students from the public schools. (9T75). Ms. Anthony reviewed exhibit R-16, and testified that she created the document during the course of her work. (9T75).

Ms. Anthony complied this information from the Department's database of special education cases. (9T75). Once Ms. Anthony identified all Lakewood settlements for the relevant time period, she requested all files to be recalled from off-site storage. (9T75). Once they had been returned to the Department, she reviewed the settlements and collected data from the agreements. (9T75).

Once she collected the data, Anthony compiled the chart (9T76; R-16). Column one of R-16 reflects the Agency Reference Number, which is tied to a particular case, but contains no student information. (9T76; R-16). Columns two and three show the dates for a board of education resolution and a settlement. (9T77; R-16). Column four is labelled "Enrollment Status of Student Post-Settlement": each of the rows in column four indicates that the student in question was "disenrolled," meaning that, pursuant to the terms of the settlement agreement, the student in question would no-longer enrolled as a student in the district. (9T77; R-16).

Column five indicates the duration of the settlement. (9T78; R-16). Each row of this column includes a number of school years covered by the agreement. (9T78; R-16). In some rows there are a number of years and a notation of an additional "ESY," which means

Extended School Year. (9T78; R-16). This means an additional period of time, typically the summer, either prior to, or after the conclusion of the school year.²⁵ (9T78).

The final column reflects the amount of District monies to be paid pursuant to the agreement. (9T81). Ms. Anthony arrived at the figures in the final column by adding together the costs outlined in the agreement, including tuition and related services. (9T81; R-16).

Finally, at the bottom of the chart there is a total amount of monies expended by the District: \$10,176,771; meaning that in total, Lakewood expended over \$10 million on students it permitted to disenroll from the public schools. (9T81-9T82; R-16).

Testimony of Ray Zirilli

Following Ms. Anthony, Respondents presented the testimony of Ray Zirilli, who discussed historical inefficiencies in Lakewood's transportation program, and how the LSTA impacted the transportation services provided to district students. . (9T88-9T104).

Mr. Zirilli is recently retired from the Department, where he worked in the Department's transportation office as the Senior Pupil Transportation Specialist for 20 years. (9T89). Prior to working at the Department, Mr. Zirilli worked for five years as the transportation director of a bus company, and one year as a transportation supervisor in a school district. (9T90). Mr. Zirilli's responsibilities at the Department included developing policy and analyzing transportation data. (9T90).

During the course of his work with the Department Mr. Zirilli was aware, off and on, of transportation concerns with Lakewood. (9T91). Lakewood had a transportation efficiency problem, including routing of busses, and keeping male and female students separate during transportation. (9T92). This was an issue as single-gender bussing could lead to

²⁵ Ms. Anthony stated that she did not know the exact date-range of extended school years. (9T83).

operating busses far below capacity decreasing efficiency and, in turn, increasing expense to the District. (9T92). Mr. Zirilli also testified that there were efforts to coordinate bell times with nonpublic schools so as to maximize efficiency of the bussing routes. (9T93-9T94).

Mr. Zirilli noted that there were concerns regarding the District's practice of courtesy bussing. (9T95-9T96). According to Mr. Zirilli, courtesy bussing is when a school board chooses to provide bussing to students whose transportation is not mandated under the law, and for which the SFRA does not provide transportation aid. (9T96). The determination of whose transportation is mandated is determined by statute. (9T96).

Exhibit R-18 stems from data compiled by Mr. Zirilli from District-reported transportation figures. (9T97). The exhibit sets forth numbers of students who are actually transported, and those who receive aid-in-lieu-of-transportation ("AIL").²⁶ (R-18). It further breaks out these numbers by students who receive mandated transportation and those who are transported on a courtesy basis. (R-18). On the whole, the document indicates that, once the Lakewood Student Transportation Authority ("LSTA") was instituted, the number of students receiving courtesy transportation from the District dropped because such transportation was being provided by the LSTA. (9T104; R-18).

Testimony of Robert Ortley

Robert Ortley was presented to testify in his prior capacity as manager of the State Audit Unit regarding a significant audit conducted by the Department regarding District enrollment and transportation.

Mr. Ortley recently retired from the Department after 38 years of employment, 19 years of which he was the manager of the State Aid Audit Unit. (10T8:12-19; 10T9:7). The

²⁶ AIL is aid paid directly to parents who are eligible for transportation, but whose particular circumstance makes providing such transportation overly costly. (9T99).

State Aid Audit Unit conducts audits on documents submitted to the Department on applications for state school aid. (10T8:22-25; 10T9:1-2). His role as manager was to review and evaluate the accuracy of work papers and ensure quality control. (10T10:4-7). He also went out to individual school districts to help his auditors conduct the audits. (10T11:4-6).

For every audit, one needs to evaluate the “working papers that are supposed to be maintained by each school district to support the data submitted for state aid formula purposes.” (10T11:9-14). The goal, then, of an audit is to evaluate how well a district supported the numbers it submitted to the Department. (10T12:17-19).

Mr. Ortley and his team conducted an audit of Lakewood’s October 14, 2011 application for state school aid and district report of transported resident students. (10T14:3-6; R-22). The application for state school aid is a data submission in which the district has to report the number of enrolled students by October 15th each year. (10T16:1-10). The district is required to report this data because students are sorted into various categories which are then used and applied to the school funding formula “in order to allocate state aid to all the school districts.” (10T16:13-17). The second aspect of the audit involved an audit of the District Report of Transported Students, which is a report on all of the mandated students being transported from their home to school. (10T16:18-24).

A report of that audit was generated on May 19, 2014. (10T14:3; R-22). The purpose of the May 19, 2014 audit “was to determine the accuracy of the numbers or the data, based upon enrollment records and accounting records of the school district for state aid reporting purposes.” (10T15:21-24). The audit team looked at the reported students for the various categories, and specifically relied upon data in the Official New Jersey School Register,

“which is a contemporaneous and continuous document which indicates and provides the reviewer daily attendance and absence for the entire school year.” (10T17:14-25; 10T18:1-8).

Overall, the auditors could not find supporting documentation to verify all of the students that the District submitted as being enrolled as of October 14, 2011. (10T18-10T27; R-22). The audit team verified 5,233 students of the 5,317.5 students reported by the District. (10T26:24-25; 10T27:1; R-22). Of specific concern was that there were special education students being sent to unapproved private schools without the necessary documentation showing an order by an Administrative Law Judge allowing the child to go there or approval by the Commissioner. (10T25:23-25; 10T26:1-7; R-22).

The audit team also looked at what Mr. Ortley called “subset categories.” (10T27:20; R-22). Subset categories provide information on additional factors that can be added into the school funding formula. (10T27:20-22). These categories add different weights for different students in the formula. (10T28:6-7). Ortley explained that “a student may have a particular weight because they’re a high school student, but if they’re also eligible for a free and reduced meal, there could be an additional funding weight attached to that.” (10T28:7-11). The audit team looked at various subset categories including low income students and limited English proficiency students divided into low income and not low income. (10T28:12-10T31:8). Overall, the audit team could not verify the number of subset category students the District reported. (10T28:12-14, 22-24; 10T30:14-17; R-22). Because there was not documentation to verify these numbers, the numbers decreased for purposes of state aid. (10T28:16-25; 10T29:1-2; 10T31:7-8; R-22).

The audit team then went to verify the number of students the District was transporting. (10T31-10T33; R-22). Again, due to lack of documentation, the team could not

verify the District's reported 14,003 students and instead could only verify 13,676.5 students being transported. (10T31:25; 10T32:1-3; R-22). At the time, the District reported 9,368 students who were bussed as "courtesy" students, but the Department was able to verify 9,398.5 students, for an increase of approximately 30. (10T37:13-19). For many years, the District provided "courtesy" bussing for students who were not remote from their school according to the transportation statute and who do not have a special education requirement. (10T36:18-22). There is no state aid for courtesy bussing.²⁷ (10T37:1-3).

Mr. Ortley stated that there was a lot of follow-up with the District in order to make sure that the District "got credit for anything we could give them credit for." (10T34:2-23). The first report indicated that, based on the calculations used for the District's formula funding, had the District been fully funded under the SFRA, the District would owe the Department \$2,308,499 for overreporting students that could not be verified. (10T38:13-23; R-22). After a draft of that report was developed, Mr. Ortley stated that it was procedure to hold exit interviews with a district in order to have them provide any additional information or at least allow a district to understand the findings. (10T40:6-11). Following issuance of a report, a school district has 75 days to respond publicly, and they have the opportunity either appeal the entire report, if they wish to do so, or only portions. (10T41:1-10). A district does not need to appeal a report if it does not want to do so and can instead submit a corrective action plan to the Department as to its responses to the report and how it anticipates enhancing procedures to ensure more accuracy in the future. (10T41:13-25).

Lakewood did not appeal the May 19, 2014 report and instead submitted a corrective action plan. (10T42:17-19; 10T44:16-17; R-23). Despite Lakewood not appealing,

²⁷ Once the State Monitor was installed in the District, courtesy bussing at district expense was phased out.

the audit team went back out to the District at the District's request so that the Department could review additional information: the audit team did go back to the District to review the information. (10T44:14-20; R-23). Adjustments in favor of the District were made which reduced the state aid differences. (10T44:23-25; R-23). The corrective action plan submitted was approved by the Department and the audit closed out via letter. (10T:44:8-10; R-23). Based on the meetings and corrective action plan, the final state aid recovery was reduced slightly to just above \$2,000,000. (10T45:16-19; R-23). This again was based on whether the formula had been fully funded by the legislature, and therefore it was recommended that one-fifth of the amount be recovered from the District. (10T45:22-25; 10T46:1-9; R-23).

Testimony of Glenn Forney

Glenn Forney is the Deputy Assistant Commissioner of Finance at the New Jersey Department of Education and testified to his knowledge regarding the state monitors, budgeting, state aid advances and the intricacies of both the District and the Township. As part of his role as the Deputy Assistant Commissioner of Finance he oversees the State Monitors throughout the State of New Jersey. (11T6:5-12). He has held numerous other positions within the Department, including a budget manager, assistant director of finance, and director of finance. (11T6:25; 11T7:1-3). Prior to that he was an auditor with the Office of Legislative Services for approximately 15 years. (11T7:6-7).

Mr. Forney explained that a state monitor is defined by statute, N.J.S.A. 18A:7A-55, and is a person placed in a district to assist in "a remediation of financial issues." (11T7:10-12). He is the Commissioner's designee for contact between the monitors and the Department, and also recruits the monitors and recommends them for placement. (11T7:15-17). The factors that would qualify a district to have a monitor, as well as a monitor's scope of authority are also

laid out in N.J.S.A. 18A:7A-55. (11T7:22-24; 11T8:1-3, 24-25; 11T9:1-5). The Department can tell if a district qualifies by reviewing their Comprehensive Annual Financial Report (“CAFR”), which is conducted by an independent auditor each year. (11T8:7-14).

Once one or two qualifying elements are identified, the Department decides how it will assist a qualifying district, whether through a County Office or budget managers, or a combination thereof, with the goal of having the district be able to fix itself. (11T9: 13-19). Only if the district cannot fix itself or needs an immediate infusion of cash will the Department put in a monitor, though in order to receive a state aid advance, a district must have a monitor put in place. (11T10:1-3; 17-24). Approximately 11 school districts throughout the state currently have a state monitor, some of which have received a state aid advance. (11T12:15-19). The goal of a state monitor is to “help fix the district and exit.” (11T12:22-23). The monitors are in place until the Commissioner finds that the district has been remediated, looking to see a stable administration, the loans, if any repaid, and the findings in the CAFR “cleaned up.” (11T13:12-21; 11T14:2-3). As determined by statute, State monitors are not Department employees, but rather are district employees. (11T14:5-10). Mr. Forney has never found that this has caused a conflict in the relationship between the Department and the monitors, and he will talk to his monitors everywhere between once a month or multiple times per day depending on the needs of each district. (11T:11-17, 22-25).

Mr. Forney assigned a budget manager, in conjunction with the County office, to work with the District beginning in 2011. (11T11:9-14). Budget managers are on the Department payroll, and the Department has found that if a district can remediate itself within a couple of years, there is a better rate of success in both avoiding a monitor and staying fiscally solvent in the future. (11T11:15-25; 11T12:1). A state monitor was installed in the District in

April 2014. (11T12:2-9). At one time there were three state monitors in the District, but currently there is only one. (11T15:19-25).

The monitors have greatly helped the district as evidenced by the deficit balance going down-from 6.4 million dollars in 2014, to a high of approximately 12 million dollars, and now back to 3.8 million dollars. (11T16:6-16; 11T57:4-5). Additionally, the number of “findings,” in the CAFR and the complexity of those findings have also decreased. (11T:18-20). Despite these improvements, the past financial damage; however, has not been completely undone. (11T16:21-25). Mr. Forney testified that a financial problem can always be fixed, but that it will take a lot of time to fix the District’s financial problems. (11T17:2-6).

The District has approximately six thousand public school children and approximately 32,000 children that attend non-public schools, with the non-public student population growth outpacing that of the public-school population. (11T17:10-17). To serve this non-public school population, there are approximately between 160-180 non-public schools located within the District. (11T17:20-21). The vast number of non-public schools is a byproduct of Lakewood’s zoning, which is determined by the Township Zoning Board whose members are appointed by the Town Council. (11T17:23-25; 11T18:1-7). The District is responsible to provide transportation costs for the non-public students, as well as some child find and possible IEP team obligations. (11T18:12-19). The State provides other funding, independent of the District, to non-public students through Chapter 192 and 193 funds. (11T18:20-22). Federal funds are also provided to both the District and the non-public students. (11T18:23-25).

Mr. Forney stated that the biggest financial stressors on the District are transportation and special education costs. (11T19:9-14). There are approximately 21,000 non-

public school students that are mandated to be transported by statute.²⁸ (11T19:20-24). Kindergarten through 8th grade students are mandated to be transported if they are further than two miles away from their school and high schoolers must be transported if they are further than two and one-half miles away from their school. (11T19:25; 11T20:1-2; see also, N.J.S.A. 18A:39-1). Local choice comes into play when parents choose to send their children to non-public schools that would require their children to be transported. (11T20:11-12). Parents absolutely have this right, and neither the Department nor the District have any say in that determination. (11T20:21-22). The cost for this non-public student mandated transportation is approximately 22 million dollars and the District receives state aid for mandated transportation costs, including that of non-public students. (11T21:6-7, 17-18). Any additional state aid for transportation costs would come through the Appropriations Act and would need to be paid for by the taxpayers spread throughout the entire state. (11T22:5-15).

Special Education costs are also a financial stress on the District. (11T22:16-19). Pulling from a large town, most children with special education issues register with the District and, pursuant to federal and statute statutes, the District must provide children services needed in their IEP. (11T22:23-25; 11T23:2-7). Once a child registers with the District, they are considered public school students and therefore are counted in the formula to receive state aid. (11T23:8-14). The District also can receive ExAid for special education student costs that exceed a threshold set by the Appropriations Act. (11T23:17-20).

Lakewood Township (“Township”) has been growing. (11T24:4-6; 11T25:12-14). There is a lot of new construction, which can be seen just by driving through the town, but also viewed in the Township’s financial information through “ratables.” (11T24:25; 11T25:4-8).

²⁸ The statute in question, N.J.S.A. 18A:39-1 et seq., is not a part of the SFRA.

A ratable, according to Mr. Forney, is the assessed value of the Township, and the ratables are increasing. (11T27:5-9). One can tell that ratables are going up through the Township's CAFR as well as in the County Schedule of Ratables. (11T27:10-14). Because the ratables have gone up, and the population growing, the tax rates in the Township have been decreasing. (11T28:3-8). Mr. Forney stated that he reviews this data as part of his job, because the Department is "always looking for solutions to problems...[w]e try to take in as much data and information as possible." (11T27:18-21).

With new construction, the Township is able to collect money for school taxes, but that money does not go to the District the first year it is collected: instead the Township retains the money. (11T25:17-24; 11T26:1). The school tax levy is struck by the District based on the ratables from the prior year. (11T26:6-7). A school tax levy is the amount set by a school board that a district is able to raise from local taxes. (11T26:19-23). If a house gets built midyear, for example July 1st, the owner must pay taxes on the full year, the Township is able to collect and retain the six months of taxes. (11T26:16-18). The Township is not obligated to give the District any more money collected from taxes than the levy amount, but it is able to provide more than the levy amount. (11T27:1-4).

Local Fair Share, a component of the state aid funding formula, using data received from the Department of Community Affairs ("DCA"), is a byproduct of the town wealth and the value of the town property. (11T28:23-25; 11T29:1-3). Local fair share is what the State believes a town is capable of paying towards the district general fund through local property taxes. (11T:15-24). A district is encouraged to tax up to the local fair share, but is not required to do so. (11T30:7-10). A district may also contribute more money than the local fair share if it chooses. (11T30:13-15). The tax levy is capped at two percent, pursuant to N.J.S.A.

N.J.S.A. 18A:7F-38, legislation separate and apart from the SFRA, and the District is currently capped out. (11T31:2-6; 11T34:16-18). As such, the District is not raising enough money to contribute to the local fair share, as the levy struck by the Board of Education is less. (11T30:16-22).

But this was not always the case as the tax levy was stagnant for a while, and actually decreased, even though the Township's population was growing. (11T31:22-25; 11T32:1-3; R-3). In 2011 and 2012 the District kept the tax levy stagnant, decreased it in 2013 and raised it slightly in 2014. (11T32:20-21; R-3). For Fiscal Year 2015, the levy jumped by 9.2 percent when the state monitor, newly installed in the District, struck the tax levy on behalf of the Board of Education that year. (11T32:22-25; 11T33:1-9; R-3). Mr. Forney stated that had the District raised the levy during the years it remained stagnant or decreased, the District would be less likely to be in a deficit as the increased revenue would have compounded over the years and produced additional funds. (11T33:15-25).

Additional funds come from an increased levy, and there are four exceptions to the tax levy cap: increase in cost of health benefits, enrollment and pension adjustments and assignment of governmental duties to another agency. (11T34:25; 11T35:1). A district that has a general fund deficit, such as Lakewood, can raise the tax levy beyond the two percent cap pursuant to N.J.S.A. 18A:22-40. (11T35:8-11). Under N.J.S.A. 18A:22-40, a district can put out a referendum to the voters in order to raise the additional funds, which may be used for T&E items. (11T35:15-22). Only after the state monitor ordered the District to put out a referendum to the voters pursuant to N.J.S.A. 18A:22-40 to raise additional funds did the District do so. (11T35:25; 11T36:1-4). The voters did not vote to approve additional funds for public school students. (11T36:5-6). A district can also put out what is called a "second question" to voters

for non- T&E items. (11T35:20-22). Even though “second question” votes would not increase funds for T&E items, should it have passed it would have eased a burden on the general fund by raising additional funds for other items. (11T36:22-25; 11T37:1).²⁹

Other than local taxes and federal funds, a district receives state aid, which is subject to the Appropriation Act passed by the Legislature every year. (11T37:8-13). The Appropriation Act allows the State to spend funds, and in years prior, state aid has been frozen throughout the state due to the Act. (11T37:14-25). The Department does not make the determination to freeze state aid. (11T37:21-23). Mr. Forney explained that “frozen” state aid means that a district would receive the same amount of aid that it received the year prior. (11T37:17-20). State aid freezes are not a product of the SFRA. (11T38:9-12). Financial issues can arise from a state aid freeze if a district is experience rising costs; however, a district has the ability to plan for state aid freezes or rising costs. (11T38:3-8).

Mr. Forney then testified further as to district budgeting. (11T39:16-21). Districts throughout the state are required to have a balanced budget; a budget where revenues equal expenditures. (11T39:16-21). The District has been able to balance its budget with the assistance of state aid advances. (11T40:1-2; see also N.J.S.A. 18A:7A-56). A state aid advance is essentially a loan, and part of the State’s overall funding mechanism. (11T40:7-10).³⁰

The Department, in determining how much of a state advance to provide, wants to make sure that a district is “providing a thorough and efficient education at the most efficient rate” and therefore works directly with a district. (11T41:8-17). Not only does the Department look at how much it costs to operate a district, but also how to most efficiently do so.

²⁹ A second question was put out for transportation, as ordered by the state monitors, which was also defeated by the voters. (5T11:23-25; 5T12:1).

³⁰ The statute pertaining to state aid advances, N.J.S.A. 18A:7A-56, is not a part of the SFRA. (11T40:11-14).

(11T41:20-23). When the Department is confident that it has found the right amount, the Commissioner certifies the need for that amount to the State Treasurer. (11T43:16-19). The Department relies on educational experts, such as the superintendent and district administration, to make any educational determinations in this process. (11T41:24-25; 11T42:1-2). Mr. Forney also requests “any and all” data from a district that it uses to support its reported expenditures. (11T42:17-23).

The District first started receiving state aid advances around 2015. (11T43:1). On June 16, 2015, the Commissioner certified the need for \$4,500,000 in advanced state aid on behalf of the District. (11T45:11-13; R-26). The state aid advance amount was approved by the Treasurer and provided to the District. (11T45:14-18; R-26). On June 23, 2016, the Commissioner certified the need for \$5,640,183 in advanced state aid on behalf of the District. (11T46:5-25; 11T47:1-15; R-27). The state aid advance amount was approved by the Treasurer and provided to the District. (11T47:16-20). On November 9, 2017, the Commissioner certified the need \$8,522,078 in advanced state aid on behalf of the District. (11T48:2-25; 11T49:1-16; R-28). The state aid advance amount was approved by the Treasurer and provided to the District. (11T49:17-21).

The District requested additional funds for the 2018-2019 school year, and Mr. Forney said that he and the Department ran into some problems with the process. (11T50:2-11). He stated that the District was not really providing much information to the Department and “[t]he numbers were changing on a daily basis.” (11T11-20). Despite Mr. Forney going to Ocean County to have meetings with District personnel, the County Business Administrator, a budget manager, and the state monitor, it was very slow getting information from the District. (11T50:12, 17-18). The Department tried to recreate what they felt the amount of state aid

should be, and provided the District with the \$28,182,090 that it had requested. (11T51:7-19). Mr. Forney notified the District of the amount of state aid via letter dated May 7, 2018. (11T51:20-25; 11T52:1-25; 11T53:1-25; R-29).

Districts must repay the state aid advances, and repayment starts the year following the advance. (11T54:1-7). There is no interest on repayment and districts may defer the repayment, which the District has done previously. (11T55:13-21). Mr. Forney testified that the District could attempt to generate additional money to repay the advance through referendum (i.e. N.J.S.A. 18A:22-40 and second question) or asking the Township for additional money. (11T55:22-25; 11T56:1-16).

LEGAL ARGUMENT

POINT I

THE SFRA HAS BEEN FOUND TO BE CONSTITUTIONAL

In January of 2008, after decades of litigation over school funding and five years of study and deliberation overseen by the Department of Education, the Legislature enacted, and the Governor signed the SFRA into law. See L. 2007, c. 260 (codified at N.J.S.A. 18A:7F-43 through -63); see also Abbott XX. The SFRA was designed to ensure that every school district has the fiscal resources available for all of its students to meet the State's educational standards as set forth in the Core Curriculum Content Standards (CCCS)³¹.

³¹ The core curriculum content standards ("CCCS") are "intended to implement the thoroughness component of the constitutionally mandated thorough and efficient education." See Abbott v. Burke, 149 N.J. 145, 161-162 (1997) (Abbott IV). The "are not a curriculum; rather, they define the result expected without proscribing specific strategies or educational methodologies. . . development of a curriculum . . . is left to the local district." Ibid. In short, the CCCS provide the framework for what all children should learn in their years of public education.

At the core of the SFRA formula is the Adequacy Budget. N.J.S.A. 18A:7F-51. Under the formula, an Adequacy Budget is generated for each district, based on a per-pupil base cost that reflects the cost of educating an elementary school student with no special needs, with the addition of weighted adjustments to reflect the additional costs of educating middle and high school students, at-risk and Limited English Proficiency (LEP) pupils and students requiring special education. Abbott XX, 199 N.J. at 153.

Thus, each district's adequacy budget is an estimate of what it costs the district to provide the core curriculum content standards according to the district's enrollment and student characteristics. It is not an approved school district budget.

"One of the primary differences between [the SFRA] and prior school funding formulas is that virtually all aid under the new formula is wealth equalized." Abbott v. Burke, 196 N.J. 544, 557 (2008) (Abbott XIX). While the SFRA allocates aid to school districts, it "also requir[es] certain levels of funding at the local level." Abbott XX, 199 N.J. at 152. So "[e]ach district contributes to its adequacy budget an amount that is based on its ability to raise local revenue." Abbott XIX, 196 N.J. at 557. This local share, commonly called the "local fair share" or "LFS," is calculated by "indexing the district's property wealth and aggregate income using statewide multipliers." Ibid.; see also, N.J.S.A. 18A:7F-52(a). Under the SFRA, a district "must provide the lesser of either its LFS, as calculated using SFRA's formula, or the local share it raised in the previous year." Abbott XX, 199 N.J. at 155; N.J.S.A. 18A:7F-5(b). The latter is often referred to as the "required local share." N.J.S.A. 18A:7F-5(b).

Once the Adequacy Budget and LFS for a district are determined, the Department computes the district's share of equalization aid. Equalization aid is an aid category that the State provides to each district for general fund expenses to support the district in meeting the

core content curriculum standards. N.J.S.A. 18A:7F-53. Under the SFRA, equalization aid is calculated by subtracting the district's LFS from its adequacy budget, provided that equalization aid shall not be less than zero. Ibid. "In short, equalization aid is the difference between a district's LFS and its Adequacy Budget." Abbott XX, 199 N.J. at 155. So, a major component of each district's State aid – equalization aid – is calculated based on a district's ability to contribute toward its budget through its LFS. N.J.S.A. 18A:7F-53. In other words, as a wealth equalized formula, the SFRA anticipates that relatively wealthier municipalities will contribute proportionally more on a local level to their districts' budgets than poorer municipalities, thus enabling the State to allocate school aid more equitably to needier districts. See N.J.S.A. 18A:7F-44(d), noting that the 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."

The SFRA also provides for various forms of categorical aid, which are determined by multiplying the cost factor for a particular aid category by the number of students in the district eligible for the aid. Categorical aid includes preschool aid, security aid, transportation aid, a portion of the special education aid, and extraordinary aid for certain special education costs. See N.J.S.A. 18A:7F-54 (preschool aid); N.J.S.A. 18A:7F-55 (special education categorical aid); N.J.S.A. 18A:7F-56 (security aid); N.J.S.A. 18A:7F-57 (transportation aid).

In Abbott XX, the New Jersey Supreme Court conducted a thorough evaluation of the newly enacted SFRA, and determined, based on the record before it, that "[t]he legislative and executive branches of government have enacted a funding formula that is designed to achieve a thorough and efficient education for every child, regardless of where he or she lives." Abbott XX, 199 N.J. at 175. Thus, the "SFRA is a constitutionally adequate scheme." Ibid.

The SFRA has been reviewed by the State's Supreme Court on several occasions, and has been found constitutional. Petitioners argue that the SFRA must be unconstitutional as applied to Lakewood as they are operating under their adequacy budget. However, as Kevin Dehmer testified, “adequacy” is not a term that carries a judgment regarding whether the particular amount is necessary for a constitutional education, but rather is merely a name given to a calculated figure. (8T25). There are many districts in the state that choose to spend above “adequacy” and some that spend below that amount. Ibid. Rather than demonstrate that they are being denied T&E, and claim that the SFRA is the cause of that denial, Petitioners have assumed that budget shortfalls in Lakewood amount to a per se violation of T&E, despite their own witnesses demonstrating that the Commissioner and Department are doing everything in their power to ensure that Lakewood students are receiving T&E. (See, 6T38-39).

POINT II

PETITIONERS HAVE NOT SHOWN THAT LAKEWOOD IS FAILING TO PROVIDE THEM WITH A THOROUGH AND EFFICIENT EDUCATION.

Petitioners cannot succeed as they have not presented any evidence that they are being denied T&E. The T&E Clause of the New Jersey Constitution requires the State Legislature to “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” N.J. Const. art. VIII, § 4, ¶ 1. The Legislature has recognized that constitutional obligation, see, e.g., N.J.S.A. 18A:7A-14a(a); N.J.S.A. 18A:7F-44, and has, in turn, explained that “[t]he breadth and scope of such a system are defined by the Legislature through the commissioner and the State board . . . so as to insure quality educational programs for all children.” N.J.S.A. 18A:7A-14a(b) (referencing N.J.S.A. 18A:7F-43 et seq.).

Petitioners have not established that students are not receiving T&E. The New Jersey Supreme Court has recognized that the Core Curriculum Content Standards (“CCCS”) embody the substantive standards that define the content of a thorough and efficient education. See Abbott v. Burke, 149 N.J. 145, 168 (1997) (hereinafter “Abbott IV”), Abbott XX, 199 N.J. at 149. The most-recent revision of the CCCS resulted in their revamping as the New Jersey Student Learning Standards (“SLS”), which “specify expectations in nine academic content areas” and set forth “[i]ndicators at benchmark grade levels . . . to further clarify expectations for student achievement.” See N.J.A.C. 6A:8-1.1(a)(1) & (2). The delivery of the SLS, like the CCCS before them, is the hallmark of T&E. See Abbott XXI, 206 N.J. at 420-22.

Rather than supporting a finding of a T&E violation, Petitioners’ witnesses testified that, through the Commissioner's efforts, Lakewood was able to ensure its ability to provide its students with T&E. Mr. Azzara expressly stated that the District’s budget for the 2017-2018 school year contained what the District needed to provide T&E. (5T107:25-108:5; 5T108:22-25). Mr. Shafter stated that the 2017-2018 budget was “sufficient . . . to deliver the services to the students.” (5T26:12-21). Ms. Spitz-Stein testified that, at least in the areas of Math and Science, the District has and is implementing curricula consistent with the SLS. Ms. Winters, Ms. Spitz-Stein, and Ms. Marshall all testified to the extensive list of opportunities available to Lakewood’s students, not only in basic skills and requirements, but in access to vocational education, technology, and the arts. Mr. Wyns testified that the Department was doing everything it could do to assist the District. See, Bacon v. N.J. Dep’t of Educ., No. 4-03, State Bd. Dec. slip. op. at 29 (Jan. 4, 2006), citing Abbott v. Burke, 119 N.J. 287, 359-362 (1990). While of course personnel from Lakewood, just as personnel from any district, can think of additional programs they would like to offer and additional staff they would like to hire, this

does not equal a deprivation of students' constitutional right to T&E. There is a difference between not having the school system one wants versus having a school system that is in violation of the State constitution.

And while the District performed below the State average on the 2017 PARCC assessment in Math, Ms. Spitz-Stein recognized that many of the District's schools did meet the State-set targets for 2017 and that the District's performance in fact improved from the 2015-2016 school year to the 2016-2017 school year. Additionally, Ms. Marshall and Ms. Winters also acknowledged that test scores were improving, rather than declining. Petitioners' school funding expert, Dr. Danielle Farrie, only looked at Lakewood's performance on statewide assessments up until 2014 to support her hypothesis that Lakewood's educational performance was in decline. (4T80-8-19; 4T103:7-9). Her conclusions regarding Lakewood's educational state were four years out of date at the time she testified. Again, it may not be the rapid progress that Lakewood or the Petitioners would like to see, but it is uncontroverted that Lakewood's test scores have been improving.

So too is the graduation rate, up 6% as of February 2018 from when Ms. Winters became Superintendent in 2012. (2T112:10-15). The District met most of its ESSA Accountability targets, and not one school in the District is in need of comprehensive or targeted support. (2T92:8-25; 2T93:1-9; 2T94:1-9). This is a credit to the District's and its students' efforts. Surely this steady and consistent improvement is not evidence of a district failing to provide its students with T&E.

Notably, Petitioners themselves did not testify, or present any specific evidence of any constitutional deficiencies in their education. Rather, Petitioners seem to rest their case on the fact that Lakewood has faced a budget deficit in each school year since 2014 and that the

Department in turn has ensured that the District has received additional money. However, contrary to Petitioners' apparent presumption, the District's budget deficit does not establish that the students of Lakewood are not receiving T&E. This is especially so where the Department ensured, without fail, that the District's deficit was filled through a state aid advance.

In fact, there is substantial evidence in the record that the Department and the Commissioner have, and are, taking substantial steps to ensure that Lakewood remains able to provide its students T&E. The Commissioner has used his extraordinary powers to install state monitors in Lakewood to remedy the financial issues that were rampant prior to their arrival. Further, the Department has provided financial assistance to Lakewood through state aid advances in order to ensure that the District could provide T&E to its students.

Petitioners argue that the state aid advances are proof positive that Lakewood's funding is unconstitutional. This argument fails to understand the nature of the state's funding mechanism and state aid. While it is true that N.J.S.A. 18A:7A-56 requires that there be a showing that an advance of state aid is necessary to ensure T&E, this does not automatically mean that the SFRA is unconstitutional. And this, like the SFRA, is only one part of the state's funding mechanism. State aid advances, like the SFRA, cannot be looked at in a vacuum, but rather must be viewed as provisions working together to meet a common goal: to provide enough funding to a district to ensure the provision of T&E. And this is what has been done.

Year after year, the State has ensured that the District can provide its students with T&E. (See, R-26, R-27, R-28 and R-29). Simply because the process requires the Commissioner to assess what a district needs, and then request that amount of money from the Treasurer does not make providing these funds discretionary. As testified to by multiple witnesses on behalf of both Petitioners and Respondents, the budgeting process is lengthy and

complicated. Once a district realizes that there will be a shortfall, the district and the Department then work together to determine how to balance the budget, whether through reductions in spending, additional monies, or a combination thereof. What Petitioners label discretionary acts by the Department or the Commissioner, are instead processes to determine how much is necessary to provide a district as opposed to whether a district will be offered money at all. There is no choice in the matter because T&E must be provided, and Respondents have ensured that it is.

As a direct result of the Commissioner's and Department's actions, RIF letters that were issued were able to be rescinded and, in some circumstances, avoided entirely, and programs that were threatened to be cut restored. "[T]he constitution does not require relief every time the slightest deviation from T&E is found, or where there is clear evidence that a deficiency is being appropriately addressed and sufficient progress is being made toward its correction." Bacon v. N.J. State Dep't of Educ., No. 50-03, Comm'r Dec. slip op. at 137 (Feb. 10, 2003).

Because Petitioners have not demonstrated that Lakewood's students are being denied T&E, they cannot prove that the SFRA is unconstitutional as applied to Lakewood.

POINT III

THE FINANCIAL CONDITION IN LAKEWOOD IS THE RESULT OF FACTORS OUTSIDE OF THE SFRA.

Petitioners claim that state aid advances are *per se* proof that the SFRA does not fund the District to the level required for it to provide its students with T&E. This is not so. Simply because the state aid advances are necessary for the District to provide T&E to its students does not mean that 1) they are not receiving T&E and 2) that the fault is with the funding formula. There are many varied causes for the District's current financial situation. The SFRA is not unconstitutional as applied to Lakewood.

A. THE DISTRICT HAS A HISTORY OF MISMANAGING FUNDS AND HAS MADE CHOICES AGAINST THE INTEREST OF THE PUBLIC-SCHOOL STUDENTS.

The District has made questionable choices in the past that have impacted and continue to impact its financial health. The District is the entity that determines the amount the school levy should be set at in order to obtain the necessary local funds to operate the school district. (11T26:19-23). While there is a tax levy cap in place pursuant to statute, if a district has not taxed up to the levy cap, it is free to raise it to that amount. But the District chose not to do this. Instead, from 2011-2014, as the non-public student population was rapidly increasing in the Township, the District decided to keep the levy stagnant, or even decrease it. (9T27:8-15; 11T31:22-11T32:3, 20-21; R-3). This meant that the District was making a choice to not generate additional revenue from local sources when it had the authority and need to do so. This means that the District is now not taxing up to its local fair share. (11T30:16-22). Christopher Soleau testified that, from an auditing perspective, with such a growth in population, he would have expected to see an increase in the levy given the increase in the Township's population. (9T27:20-24; R-15). The school levy was only increased to reach the cap after the state monitor was appointed in April 2014 and required the District to do so. (8T45; 11T32:22-24; 11T33:1-9; R-3). Glenn Forney testified 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. (11T33:15-25). He felt that had the District increased the levy during those years, it could have reduced if not alleviated the deficit that the District faced in the years to follow. Ibid. The District's tax rates are not high compared to surrounding areas and other districts of similar sizes, and are in fact decreasing. (R-14). Petitioners argue that the District has

a revenue problem instead of a spending problem. The District; however, was not seeking to generate revenue sufficient for its needs or to contribute up to the local fair share.

Additionally, the District has entered into numerous special education due process settlements over the years where, as part of the settlements, students disenroll from the District and the District continues to pay money for some aspect of their education over the term of the agreement. (See R-16). While not challenging the validity of these settlements, they are nevertheless concerning. Districts receive no special education funding through the formula for students who disenroll from the district. (8T36).³² Therefore, the District would receive no aid to pay for these settlements given the students have disenrolled. From 2012 through 2018, the District entered into settlements totaling approximately \$10,176,771 in which students have disenrolled from the District. (See R-16). It is unclear what funds have been used to pay out the \$10,176,711 to students no longer enrolled in the District.

As testified to by David Shafter, Christopher Soleau and Robert Ortle, the District was not keeping track of its expenditures and data prior to the appointment of the state monitor. This led to financial liabilities and question as to whether the District actually knew what and how much it was spending its money on. David Shafter testified that when he first came into the District, he could not rely on the accuracy of any record keeping. (5T31:16-21). This was a problem as he had no idea what money was being spent, what money was actually available, and from what account funds were being taken from, which in turn severely handicapped the District's ability to plan for any future expenditures. (5T73:20-25; 5T74:1-2).

Mr. Shafter's testimony as to the state of the District's financial records is consistent with that of Mr. Soleau's. Mr. Soleau testified to seeing little in the way of supporting

³² Districts receive funding for all mandated transportation students whether they are enrolled in the district or not.

documentation and reconciliation for expenditures during the year that he was on site in the District. He recalled finding a teacher who was being paid, at public expense, for being in two places at the same time. (9T39:25; 9T40:1-7; R-15). He explained that purchase orders were created after services were rendered and how this meant that the District could not be sure of what funds were available to it at any given time. (9T45:11-21). He found a litany of questionable expenses including exorbitant legal costs, overtime payments for staff ineligible for overtime and extreme salary adjustments. (See, R-15). The Audit Team found numerous private unapproved special placements that the District was paying for, and he could not determine how the District calculated the tuition it was paying out as there was virtually no documentation to reference. (9T49-50). Further, he and his team made observations regarding transportation, noting that the District could save millions of dollars by instituting various proposals to streamline bussing. (9T61). While the District did institute changes to transportation after the state monitor was installed, this does not mean that it was able to recoup the millions of dollars already spent on an inefficient transportation system. As Mr. Soleau testified, any problems identified in the Report that the District was able to fix, would only be solutions going forward. (9T64:17-21). The damage the District had already inflicted upon itself could not be undone simply by installing a monitor and making changes to the District's financial practices. Thankfully, the Commissioner was able to install a state monitor to reverse the financial bleeding and improvements have been made under the monitors' careful watch, but it will be a long road ahead.

Robert Ortley's observations of the District were also consistent with those of Mr. Shafter and Mr. Soleau. He found difficulty in reconciling the District's representations on its enrollment submissions to the Department with the data it had to back it up. (See R-22). Even

after giving the District multiple opportunities to provide data to the Department, the Department was still unable to verify the District's submissions, which led to the District owing the State a portion of its previously received state aid. (See, R-22 and R-23).

Petitioners assert that the District's financial problems will be rectified by declaring the SFRA unconstitutional and devising a new funding formula unique to Lakewood, but that view is myopic. One cannot ignore the reality of the situation at hand. The District has had a significant hand in creating its current financial state, and despite the state monitors' best efforts, they cannot immediately pull the District out of the financial hole that it dug itself into before their arrival. As Glenn Forney indicated, the deficit is shrinking and the findings in the CAFR reducing, but the solution requires hard work and is a long time coming. (11T16:6-11T17:6). There are a multitude of factors that contribute to Lakewood's current financial state and therefore it is imperative that solutions be multipronged. This is the reality of the situation. That being said, the issue before this Court is to determine whether the SFRA is unconstitutional as applied to the District and Petitioners have not proven that it is.

B. LOCAL CHOICES IN THE MUNICIPALITY CONTRIBUTE TO THE CURRENT FINANCIAL CONDITIONS IN LAKEWOOD.

The current financial conditions in Lakewood were significantly influenced by numerous local choices, in the District and in the Township. While each municipality, and its residents, can and certainly should prioritize matters of local concern, they cannot abdicate responsibility for the outcome of those choices.

There is no doubt that local choices have impacted the District. And these choices, along with a multitude of other circumstances, have all come together to make Lakewood's financial situation what it is today. But simply because Lakewood is in deficit does not mean that the SFRA is unconstitutional. Further, the record has demonstrated that the

Commissioner has ensured that the District is able to provide T&E to its students despite any financial problems.

The situation in Lakewood is a multifaceted political question that cannot be solved before the Commissioner. Local choices that have impacted the District include, but are not limited to: 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. Communities are encouraged to make choices as to what best serves their needs; however, this cannot be done without considering, and taking responsibility for, all who reside within the community.

Because there are multiple factors that have contributed to Lakewood's financial state, the solution to the current situation is far more complicated than what Petitioners propose. Petitioners have not demonstrated that changing the SFRA will solve or even alter the current state of the District. Petitioners have not demonstrated that anyone is being denied T&E or that the SFRA is unconstitutional as applied to the District.

C. THERE IS LEGISLATION OUTSIDE OF THE CONFINES OF THE SFRA THAT HAS AFFECTED THE DISTRICT.

Petitioners fail to recognize that the District's financial concerns have been affected by legislation separate and apart from the SFRA. This is not to say that this other legislation is unconstitutional as applied to Lakewood, but rather that Petitioners' proposal that the SFRA be deemed unconstitutional is an overly simplistic premise.

One of Petitioners' central themes in their presentation was the idea that Lakewood has a revenue problem, and not a spending problem. When asked how he would solve the "revenue" problem, State Monitor David Shafter indicated he would increase revenue,

one way of which is to raise taxes. Noting that “a property tax levy cap is crucial to controlling various areas of government spending” and that a cap “will force government to live within their means, encourage public officials to elevate the public interest over special interests, and. . . reduce the rate of growth in property taxes,” in April 2007, the Legislature enacted P.L. 2007, c. 62, which imposed a 4% limitation on school district and municipal tax levy increases. L. 2007, c. 62 §§ 1, 2; See, N.J.S.A. 18A:7F-38 and -39. As originally enacted, the law permitted a number of cap “exemptions,” including adjustments (for school districts) for increases in enrollment, health care costs, pension costs, special education costs, capital outlay, amounts approved by a waiver by the Commissioner, and for decreases in total unrestricted State aid. L. 2007, c. 62 §§ 3, 4. The law also provided a mechanism for districts to submit a separate question to the voters to increase the tax levy by more than the allowable amount. L. 2007, c. 62 §4.

In July 2010, the Legislature further revised the tax growth limitation provisions, which had been set to expire in 2012. In L. 2010, c. 44, the Legislature imposed further restrictions on local tax levy increases, reducing the amount by which local tax levies could increase from 4% to 2%. L. 2010, c. 44, §4; N.J.S.A. 18A:7F-38. And for school districts, the new law eliminated a number of cap “exemptions,” limiting them to adjustments for enrollment increases and for increased costs for health care and pension contributions. L. 2010, c. 44, §§ 4, 5. It also permitted districts to submit a special question to the voters to increase the levy above the capped amount under certain circumstances, L. 2010, c. 44, §5, and to “bank” any portion of the permitted 2% increase plus applicable adjustments not used by the school district in a budget year.

Both State Monitors noted that taxes could not be increased because of the two percent cap on the taxes that could be levied on the community. (5T16:21-22; 5T39:19-20; 5T130:2-4). The levy cap is not a part of the SFRA. Without any legislative action to lift the levy cap, Mr. Azzara noted that “only the local voter can raise taxes above the cap.” (5T130:18); see also, N.J.S.A. 18A:7F-39(c); N.J.S.A. 18A:22-40.

Lakewood has a high ratio of equalized property value to public school student. In a district with such a large amount of aggregate wealth relative to its public-school population, again, the solution to increased costs, especially mandated transportation, would generally involve increasing the district's tax levy. Currently, Lakewood is unable to tax up to its local fair share due to the levy cap, the absence of obtaining approval from Lakewood voters, and the District's prior decisions to keep the levy stagnant. To make up for this, Petitioners are essentially seeking increased equalization aid from people across the state, through taxpayer money.

The Annual Appropriations Act also affects the District, as it does all other districts throughout the state. Before the fiscal year expires, the Legislature must pass an Annual Appropriations Act for the upcoming fiscal year. Once signed by the Governor, the Annual Appropriations Act controls all state spending for that fiscal year. School funding is part of this budget process. Within two days of the Governor's Budget Message, the Commissioner must notify each public-school district of the anticipated amount of State aid to be allocated for the upcoming fiscal year. N.J.S.A. 18A:7F-5. But because of the Legislature's appropriation authority, no allocation is absolute until the Annual Appropriations Act is enacted.

The Appropriations Clause is the “center beam of the State's fiscal structure.” City of Camden v. Byrne, 82 N.J. 133, 146 (1980); see also, Burgos v. State, 222 N.J. 175, 207

(2015). It reflects “a fundamental judgment to centralize and simplify state fiscal operations.” City of Camden, 82 N.J. at 146. “The Appropriations Clause ‘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.’” Burgos, 222 N.J. at 208 (citing City of Camden, 82 N.J. at 146). “A definite legislative intent as reflected in the general appropriations laws necessarily supersedes any previously expressed legislative desires at least for the duration of the particular appropriation act.” City of Camden, 82 N.J. at 154. And “[t]here can be no redress in the courts to overcome either the Legislature’s action or refusal to take action pursuant to its constitutional power over state appropriations.” Id. at 149.

“Efforts to dedicate monies through legislative acts other than the annual appropriations act have no binding effect. They are read as impliedly suspended when contradicted by the budgetary judgment of the presently constituted Legislature acting in concert with the Governor in their constitutionally prescribed budget formation roles.” Burgos, 222 N.J. at 183.


And in years past, state aid to the districts has been frozen by the Legislature through the Appropriations Act. Glenn Forney testified that a freeze on state aid could and does affect a district’s finances. While a district has the ability to plan for such an event, state aid freezes inevitably affect a district’s budget. As testified to by Mr. Forney, state aid freezes are completely unrelated to the formula.

CONCLUSION

For the reasons set forth above, it should be determined that Petitioners have failed to meet their burden and the Second Amended Petition dismissed.

Respectfully submitted,

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