

Will Lakewood students ever get the education to which they're constitutionally entitled? | Opinion

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Lakewood's 5,200 public school students have insisted that they are being denied their fundamental constitutional right to a "thorough and efficient" education. The court has ruled in their favor and sent their case to the state education commissioner to find a remedy, yet no such remedy has come from the state, this lawyer argues. John Jones | For NJ Advance Media

By Paul Tractenberg | Mosaic guest columnist

For more than nine years, Lakewood's 5,200 public school students have insisted that they are being denied their fundamental constitutional right to a "thorough and efficient" education.

Their case already has been heard by an administrative law judge, the acting commissioner of education and, most recently, a three-judge panel of the New Jersey Appellate Division.

On March 6, the panel ruled unanimously in favor of the Lakewood students and sent the case back to the acting commissioner for her to answer the students' related assertion — that the reason why they were being denied a thorough and efficient

education was because of the state's School Funding Reform Act (SFRA), the major source of state educational aid to districts.

The fact that the state chose not to appeal this decision to the New Jersey Supreme Court means that the ruling is binding law.

Nonetheless, inexplicably, the acting commissioner seems to have done nothing at all in response to the court's remand of the matter to her and has resisted every effort of the students' lawyers (of whom I am one) to even provide a specific timetable for her response.

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This all matters greatly to the Lakewood public school students because they are virtually 100% low-income, 95% Latino and Black, and educationally disadvantaged by most metrics. On their behalf, my co-counsel Arthur Lang and I have argued throughout this frustratingly overlong litigation that time is of the essence for them because every day they fail to get the education to which they are constitutionally entitled is a day lost to them forever.

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The acting commissioner and her Department of Education are responsible for assuring that all students under their charge, including Lakewood's, are receiving the high level of education guaranteed to them by New Jersey's Constitution. And it should not require the pursuit of a longstanding lawsuit to galvanize them into action.

Yet, for reasons only known to them, they failed to remedy this unconstitutional situation on their own and their response throughout this litigation, including most pointedly now, has been to delay and obfuscate.

Our immediate objective is to establish a long overdue and adequate remedy for Lakewood's public school students, as well as perhaps similarly situated public school students in other nearby districts such as Jackson, Brick and Tom's River, where the transportation and special education needs of large and growing numbers of nonpublic school students have resulted in an ever-increasing portion of the public school budget being diverted to meet those legally-required needs.

In the extreme case of Lakewood, more than half of the entire district budget has been used to cover nonpublic school costs, obviously an untenable situation. Instead of amending SFRA, or devising a separate legislative remedy, to reflect these realities, the state has responded with a manifestly inadequate patchwork approach of directing periodic discretionary funding supplements to SFRA's formula funding.

In Lakewood, that has taken the form of the state extending literally hundreds of millions of dollars in repayable loans to the district, with more in the offing, to keep the district barely afloat. This has created what the administrative law judge in the case described as an "unsustainable" fiscal situation for Lakewood.

By the way, there are two statutory preconditions to these loans: the district must have state monitors in place with broad powers over the district (and they must remain there until the loans are fully repaid out of future state education aid), and the commissioner must have certified that without the loans the district cannot provide a thorough and efficient education.

As the New Jersey Supreme Court's numerous rulings in *Abbott v. Burke* attest, funding to satisfy their educational requirements must be certain, predictable, and guaranteed. Discretionary state loans and other stop-gap funding, often announced at the last minute, satisfy none of those constitutional conditions and make meaningful education planning impossible.

As has been true throughout the long history of New Jersey's school funding saga, the ultimate answer to Lakewood's quandary may have to lie with the courts rather than the other branches of state government. The question is whether, when confronted with this issue yet again, the New Jersey courts, and especially the state Supreme Court, will stand tall, as it proudly proclaimed decades ago, as the "last-resort guarantor of constitutional rights."

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